

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

**Latasha Holloway, *et al.*,**

**Plaintiffs,**

**v.**

**City of Virginia Beach, *et al.*,**

**Defendants**

**Civil Action No. 2:18-cv-0069**

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**PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

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**PLAINTIFFS' EXHIBIT 7**

Deposition Transcript of Virginia Beach City Council Member John Moss



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# Transcript of John D. Moss

**Date:** September 13, 2019

**Case:** Holloway, et al. -v- City of Virginia Beach, et al.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

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LATASHA HOLLOWAY and :  
GEORGIA ALLEN, :  
Plaintiffs, : CASE NO.  
v. : 2:18cv00069  
CITY OF VIRGINIA BEACH, et al., :  
Defendants. :  
-----x

Deposition of JOHN D. MOSS  
Virginia Beach, Virginia  
Friday, September 13, 2019  
9:10 a.m.

Job No. 261326

Pages 1 - 215

Reported by: Penny C. Wile, RPR, RMR, CRR

Transcript of John D. Moss  
Conducted on September 13, 2019

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1 Deposition of JOHN D. MOSS, held at the  
2 offices of:

3  
4  
5 VIRGINIA BEACH CITY ATTORNEY  
6 2401 Courthouse Drive  
7 Municipal Center, Building One  
8 Room 260  
9 Virginia Beach, VA 23456  
10 (757) 385-4351  
11  
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17 Pursuant to Notice, before Penny C. Wile,  
18 RPR, RMR, CRR, Notary Public of the Commonwealth  
19 of Virginia.  
20  
21  
22

Transcript of John D. Moss  
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1                   A P P E A R A N C E S  
2       ON BEHALF OF THE PLAINTIFFS, LATASHA HOLLOWAY  
3       AND GEORGIA ALLEN:

4               ERIN CHLOPAK, ESQUIRE  
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8               Washington, DC 20005  
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10              and

11             ANNABELLE E. HARLESS, ESQUIRE  
12             CAMPAIGN LEGAL CENTER  
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14             Suite 302  
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17  
18  
19  
20  
21  
22

Transcript of John D. Moss  
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A P P E A R A N C E S

ON BEHALF OF THE DEFENDANTS, CITY OF VIRGINIA  
BEACH, ET AL.:

CHRISTOPHER S. BOYNTON, ESQUIRE  
OFFICE OF THE VIRGINIA BEACH CITY ATTORNEY  
2401 Courthouse Drive  
Municipal Center, Building One  
Room 260  
Virginia Beach, VA 23456  
(757) 385-4351

Transcript of John D. Moss  
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P R O C E E D I N G S

Whereupon,

JOHN D. MOSS,

after having been first duly sworn, was examined  
and did testify under oath as follows:

MS. HARLESS: So we'll state our  
appearances for the record.

I'm Annabelle Harless, and I represent the  
plaintiffs in this case. And I work with the  
Campaign Legal Center in Chicago.

MS. CHLOPAK: Erin Chlopak. And I also  
work for the plaintiffs in this case. And I work  
at the Campaign Legal Center in Washington, D.C.

MR. BOYNTON: I'm Chris Boynton. I'm with  
the Virginia Beach City Attorney's Office. And I  
represent the defendants in the case.

THE DEPONENT: And I'm John Moss, City  
Council Member At-Large for the City of Virginia  
Beach, Virginia.



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1 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS:

2 BY MS. HARLESS:

3 Q. Nice to meet you, Mr. Moss. As I said, my  
4 name is Annabelle Harless. And I'm going to be  
5 asking you some questions today.

6 Before I do, have you ever been deposed  
7 before?

8 A. Yes.

9 Q. You have?

10 A. Correct.

11 Q. So you know the basic ground rules of a  
12 deposition?

13 A. Well, you can repeat them to refresh my  
14 memory.

15 Q. I'll go over a couple.

16 The court reporter is writing down  
17 everything that we say. So that she's able to get  
18 everything on the record, please wait for me to  
19 finish asking my question before you start  
20 answering, and I will do the same for you, so we  
21 don't interrupt each other and so we can get a  
22 clear record.

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1           The court reporter can only record verbal  
2       responses, so it's important that you answer with  
3       a yes or a no or an audible answer rather than  
4       nodding your head.

5           And we can take a break at any time but  
6       not while a question is pending.

7           Does that make sense?

8           A. Correct. It does.

9           Q. Okay. Could you please state your full  
10       name for the record?

11          A. John Darrell -- that's D-A-R-R-E-L-L --  
12       Moss, M-O-S-S.

13          Q. And, for the record, what is your race?

14          A. Caucasian.

15          Q. Do you understand you're under oath today?

16          A. I do.

17          Q. Is there any reason why you cannot give  
18       truthful answers to my questions today?

19          A. No.

20               MR. BOYNTON: And before we get too deep  
21       into the deposition, there's been some discussion  
22       about the scope and the invocation of legislative

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1 privilege with respect to Council members.

2 Just to get it on the record, Mr. Moss, do  
3 you wish to invoke your right to legislative  
4 privilege to the extent it applies to the  
5 questions here today?

6 THE DEPONENT: I do.

7 MS. HARLESS: It is our understanding that  
8 that privilege has to be brought up at every  
9 question that is asked.

10 MR. BOYNTON: And we will. But he's  
11 invoking it as a general principle, just to make  
12 clear that he has chosen to do that. And, then,  
13 we will raise it as an objection as to questions  
14 appropriate for that objection.

15 Q. You've mentioned you've been deposed  
16 before, correct?

17 A. Correct.

18 Q. Were those in cases involving you  
19 personally or the city?

20 A. The city only.

21 Q. Were any of those cases about --

22 A. Correction. Way back when I was a minor I

Transcript of John D. Moss  
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1 was deposed for a traffic accident, so...

2 Q. Okay. Personally?

3 A. Correct.

4 Q. What were the depositions for the city?

5 A. They were regarding the arena case. We  
6 were being sued by ESG for breach of contract. It  
7 was a state court matter.

8 Q. What was the issue? Breach of contract?

9 A. Breach of contract. Correct.

10 Q. Have you ever been deposed in any other  
11 cases?

12 A. None other than the two that I mentioned,  
13 no.

14 Q. Okay. I'm not asking for the content of  
15 any communications you've had with your attorneys  
16 here. When did you first learn about this  
17 lawsuit?

18 A. When I received an email that --  
19 requesting that I would be being asked for dates  
20 and that the city had received a notice for  
21 deposition. I can't tell you the exact date, but  
22 it's been in the last 30 days.

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1 MR. BOYNTON: Okay.

2 Q. So --

3 A. I was aware there was a lawsuit. But in  
4 terms of being asked for a deposition?

5 Q. No. No. I'm asking when did you first  
6 become aware that this lawsuit had been filed?

7 A. When we got an advance notice from the  
8 City Attorney telling us. I can't recall. It was  
9 a piece of memorandum or something that was  
10 received.

11 Q. I don't know want to know the contents of  
12 the document. I just want to know the date.

13 A. I do not know the date.

14 Q. Was it 2018?

15 A. I couldn't tell you. It's in the last 60  
16 days, maybe. I can't tell you when. I do not --  
17 I cannot definitively recall when I was first  
18 notified that the lawsuit was being filed.

19 Q. Do you know when the lawsuit was  
20 originally filed?

21 A. I do not.

22 Q. Okay. Besides meeting with your

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1 attorneys, did you do anything to prepare for this  
2 deposition?

3 A. No, other than we were in executive  
4 session, which it is legislative privilege. I  
5 have that information. But I have not personally  
6 done any preparation, no.

7 Q. You didn't review any documents, besides  
8 meeting with your attorneys?

9 A. Other than we got a memo in package Friday  
10 that talked about all city litigation that was  
11 going on. I did read that memo. I received it on  
12 Friday in my packet. But that's, I guess,  
13 attorney privilege, I assume.

14 MR. BOYNTON: They get letters from the  
15 attorneys explaining various -- status of various  
16 cases. That's what he's referring to. It is pure  
17 attorney-client privilege.

18 Q. Did you discuss this deposition with  
19 anyone?

20 A. Other than the City Attorney, no.

21 Q. Besides any communications with your  
22 attorneys, did you have any communications with

Transcript of John D. Moss  
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1 anyone else about this deposition?

2 A. No.

3 Q. Did you bring any documents with you to  
4 this deposition today?

5 A. No.

6 Q. Is there any reason why you could not be  
7 in Norfolk, Virginia during the week of January  
8 14th, 2020?

9 A. I work for the Commander of Submarine  
10 Forces. The operational demands of the Submarine  
11 Force are not predictable; they're dependent upon  
12 our adversaries, so I cannot give you a definitive  
13 answer you would like. I would make my best  
14 efforts. But my job is very unpredictable as the  
15 adversaries are very unpredictable.

16 Q. You're not going to be out of the country?

17 A. Not to the best of my knowledge at this  
18 time.

19 Q. You don't have a vacation planned for that  
20 week?

21 A. Not at this time.

22 MS. HARLESS: I'm going to mark this as

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1 Exhibit 1.

2 (Exhibit 1 was marked and  
3 attached to the transcript.)

4 A. Can I have time to read the whole thing?

5 Q. Yep.

6 A. Thank you very much.

7 Okay. Thank you very much.

8 Q. So you were just taking a look at Exhibit  
9 1. Have you seen this document before?

10 A. I haven't seen this part of the exhibit.

11 This is pages, I guess -- the cover page, the  
12 second page proof of service, the Federal Civil  
13 Procedures and effective things, Exhibit A. I  
14 don't remember seeing this specific document, but  
15 I do recall the things I was being asked to look  
16 for in discovery in terms of things I was supposed  
17 to search my records for. I can't recall if this  
18 was the exact format I reviewed, but I do find the  
19 things being asked for being familiar relative to  
20 the request for discovery.

21 Q. Okay. So you've never seen the subpoena  
22 or this exhibit, but you've been given the



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1 document production request?

2 A. I got a thing with my name on it. It  
3 didn't look exactly like this. The subpoena thing  
4 I have -- I have it in my phone what I received.  
5 But it had -- I was being -- giving a deposition.  
6 But this particular document you're asking here, I  
7 have not seen this particular page. I saw a  
8 thing about giving a deposition. But I don't  
9 recall seeing this specific page. I just don't  
10 recall it.

11 Q. Okay. So if you turn --

12 A. Not saying I didn't get it. I'm just not  
13 recalling it.

14 Q. Let's turn to the very last page. The  
15 very last page says, "Councilmember John Moss  
16 indicates he does not possess any responsive  
17 documents." Do you see that?

18 A. That's not what I said.

19 Q. I understand.

20 A. What I said was all the documentation that  
21 I had that was responsive could be found in the  
22 councilmail archived documents on vb.gov. But I

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1 did not physically possess any documentation.

2 That was my response.

3 Q. Okay. I'm not sure that was communicated  
4 to us, but we'll discuss that in a second.

5 So I'd like you to just go to page 4 of  
6 this document, which is titled Exhibit A.

7 A. Let me number them myself.

8 Q. At the top of this page it says Documents  
9 to be produced by John Moss. Do you see that?

10 A. Uh-huh.

11 Q. So you said you haven't seen Exhibit A  
12 before but you've seen these requests, correct?

13 A. Yes. The content. I just don't recall  
14 this specific exhibit. But I do recall being  
15 asked to search all my stuff and look through my  
16 garage, look through all -- everything that I had  
17 from campaign material.

18 I don't retain any city documents at my  
19 home because they're always available from the  
20 city. So when my Council meeting is over, the  
21 trash can is the favorite place I go to. I do not  
22 retain physical documents at my home.

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1 Q. You don't retain any physical documents?

2 A. City business? No. There is no need to.

3 Q. What about non-city business?

4 A. Well, my personal stuff, yes.

5 Q. So this subpoena was sent to you in your  
6 personal capacity. Do you understand that?

7 A. I understand that. But I'm asking my  
8 personal finances, my checkbook, stuff for myself  
9 personally, not within the scope of what you were  
10 asking for?

11 I don't retain campaign stuff when the  
12 campaign is over, except for financial documents  
13 I'm required to retain for five years. When the  
14 campaign is over, it's over. All the stuff I  
15 have, because all -- campaigns change. I don't  
16 retain anything, other than four-by-four signs.  
17 But I don't retain documentation. It's not -- it  
18 doesn't have any value.

19 Q. You don't retain any emails?

20 A. No. I'm not required to, and I don't on  
21 purpose.

22 Q. Do you delete your emails?

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1 A. I certainly do, on purpose.

2 Q. Do you recall receiving anything of a  
3 litigation hold memorandum in this case?

4 A. Yes, but not since my campaign was over.  
5 My campaign ended before the -- before the notice  
6 was received. Now, if you're asking me do I have  
7 all my Council emails, that answer would be in the  
8 affirmative. And that's why I made a comment it's  
9 either in vb.gov or I've sent copies when I  
10 respond. Go into the councilmail@vb.com, I think  
11 it is, is the archive maintained by the City Clerk  
12 of all the City Council member emails, and they  
13 are there.

14 Q. We'll get into that.

15 A. Okay.

16 Q. I just want to make sure that you've  
17 actually seen these document production requests,  
18 read them, and then looked for responsive  
19 documents.

20 A. Correct.

21 Q. So you have not seen this document, but  
22 you think you've seen all these production

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1 requests, correct?

2 A. Yes.

3 Q. Did you search for any and all documents  
4 responsive to these requests that were in your  
5 possession, custody, or control?

6 A. I did.

7 Q. How did you conduct your search for  
8 responsive documents?

9 A. First of all, I went through and looked in  
10 my garage, because that's where I keep boxes, just  
11 to see if, by chance, there was anything other  
12 than campaign banners, four-by-four signs, yard  
13 signs, did I have any stuff left that was other  
14 than that. I found some stickers, but that wasn't  
15 responsive; just had my name on it. So that's the  
16 first thing I did.

17 Secondly, I went back and looked in my  
18 hard drive of my computer to look for stuff that  
19 would have been campaign material. And that was  
20 responsive to what you asked for, other than  
21 things like my financial records which I have to  
22 keep for five years. And I didn't find anything

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1 that was responsive to these questions, and so I  
2 responded back I was not in possession of  
3 materials that were within the scope of the  
4 discovery.

5 Q. What did you do to search your hard drive  
6 for responsive materials?

7 A. Can you be more specific?

8 Q. What search terms did you use to look for  
9 responsive documents on your computer?

10 A. I went to look to the actual folders  
11 because that's what I have on my machine. I  
12 looked at my campaign folders. And that's what I  
13 went and looked for.

14 Q. Did you look at any documents besides your  
15 campaign folders?

16 A. No. I had no reason to reasonably believe  
17 that I would have put something other than that on  
18 my hard drive. I mean, it's very -- I don't have  
19 lots of stuff, but, no, I did not do a look for  
20 this expression on everything in my hard drive,  
21 no.

22 Q. So you manually looked through only a few

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1 folders on your hard drive, correct?

2 A. I manually looked through the applicable  
3 folders. I wouldn't use the adjective few or many  
4 or lots or little, but all that were appropriate.

5 Q. And to be clear, the folders you looked  
6 through were campaign-related, correct?

7 A. Correct.

8 Q. Did you search your personal email account  
9 for any responsive documents?

10 A. I certainly did.

11 Q. How did you --

12 A. That's not easy to do, I might add.

13 Q. How did you conduct that search?

14 A. I used them by the names that were  
15 provided. I looked for anything that said  
16 election. I looked for anything that said voting,  
17 campaign, disparity. I can't tell you all the  
18 expressions that I used, but I did use a number of  
19 expressions to look.

20 Q. Can you remember any others that -- any of  
21 the search terms that you used to search through  
22 your email?

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1           A. I did use things, you know, like -- I know  
2 John Perry was empty. I ran with John Perry in  
3 1986, so I knew that that wasn't going to be in  
4 there. But I did go back and look through all the  
5 emails that I did have, like 10,000, but I can't  
6 tell you all the search terms, but I think they  
7 were reasonable terms I used.

8           But for the bulk of the stuff that's city  
9 business, it would all be in my vbgov account or  
10 it would be in my Council archive account. And  
11 I'm sure you probably were able -- and I know the  
12 city searched those to give you the answers, so I  
13 think you -- that should be fairly comprehensive.

14          Q. So right now I'm just asking for things  
15 that are in your personal capacity, not city.

16          A. Oh. Campaign. That's why I looked for  
17 the campaign terms, yes. To the extent that I --

18          Q. Campaign or anything else. It's not  
19 solely related to the campaign.

20          A. I automatically delete personal stuff  
21 after so many months. I don't retain personal  
22 email forever.



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1 Q. What -- how many months?

2 A. About six. And I just don't keep them  
3 after that. I mean, it's just -- I hope everybody  
4 else does that, too. There is no need to keep  
5 stuff on a personal basis. But notes to my wife,  
6 my kids, you know, that's personal.

7 Q. So after six months your personal email  
8 account is set up to automatically delete?

9 A. Purge. Correct. Yes. I don't know  
10 whether they archive on the cloud. You know, I  
11 don't use cloud services, so...

12 Q. Are there any types of emails that are --  
13 that you have set the account up to not  
14 automatically purge after six months?

15 A. Not to my knowledge.

16 Q. Did you search your text messages for  
17 responsive information?

18 A. I did. I don't keep very much in the way  
19 of text messages for very long. I can't tell you  
20 how far back that is, but I don't keep them very  
21 long.

22 Q. How did you search your text messages?

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1           A. I look for names. You know, look for  
2 names. And, then, you have to go back and scroll.  
3 That's why I'm glad I don't keep many because it  
4 takes a long time to open those up and go and  
5 look.

6           But there was nothing that was in there  
7 that I could see that dealt with voting systems,  
8 anything within the scope of this, because that  
9 hasn't been a topic on my -- hasn't been a topic  
10 for me. And I don't have any texts on it. I just  
11 look, I mean --

12          Q. When you mentioned you don't keep your  
13 texts very long, what did you mean by that?

14          A. I try to go through there often and just  
15 delete, delete, delete, delete, and just because  
16 my phone, one, has limited storage. That  
17 partially drives me there. I don't have a big  
18 phone. But I just delete my messages just as a  
19 matter of practice.

20          Q. What kind of cellphone do you have?

21          A. An iPhone.

22          Q. Who is your service provider?

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1           A. T-Mobile. But it has been Verizon, as  
2 well.

3           Q. How long has it been T-Mobile?

4           A. Gosh. I don't know. Maybe a year. Maybe  
5 two.

6           Q. And before that, it was Verizon?

7           A. Uh-huh.

8           Q. How long do you think the service provider  
9 was Verizon?

10          A. Gosh. I don't know. It's been a long  
11 time. I just know it was at least, probably, four  
12 years.

13          Q. All right.

14          A. But I don't remember exactly the exact  
15 dates.

16          Q. Do you have a Google Drive or any kind of  
17 file-sharing account?

18          A. No.

19          Q. Are you on social media?

20          A. Yes.

21          Q. Which social media accounts?

22          A. Facebook is the only social media account

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1       that I use.

2           Q. You don't have a Twitter account?

3           A. No.

4           Q. Don't have an Instagram?

5           A. I had a Twitter account with my campaign,  
6 but I have had no Twitter account since then; and  
7 it hasn't been active in a long time.

8           Q. So there was a Twitter account for your  
9 campaign?

10          A. Correct.

11          Q. In what year?

12          A. The one I just -- 2018.

13          Q. And you think that account is inactive?

14          A. I know it's inactive. I haven't used it.

15          Q. Did you search that account for  
16 responsive documents?

17          A. I did. I only used it two or three times  
18 in 2018. I know my campaign wanted me to use it;  
19 I just didn't have the time.

20          Q. You said you have a Facebook account,  
21 correct?

22          A. Two. I have a personal Facebook account,

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1 and I have a Coucilman John D. Moss Facebook  
2 account. And they are open access. I did not  
3 search those accounts because they are open to the  
4 public. And I haven't suspended them or deleted  
5 them or otherwise manipulated them. You can go  
6 back a long ways, since their inception. But I  
7 did not search those accounts.

8 Q. Do you know what year you first joined  
9 Facebook?

10 A. No, I do not.

11 Q. Do you have an idea?

12 A. I do not. Seems like forever, but I do  
13 not have a date when that happened.

14 Q. Do you have any kind of recollection of  
15 whether you joined it when it first became a thing  
16 or --

17 A. I do not have a recollection of when I  
18 joined. I just don't. It's been a long time, but  
19 I can't tell you when.

20 Q. Do you ever post about any of the items in  
21 these document --

22 A. I may have.

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1 Q. -- requests on social media?

2 A. I can't tell you if I did or did not. I  
3 just don't have that kind of historical cognition.  
4 But it's all there. You can see it if I did. I'm  
5 sure I have commented on it, but I can't tell you  
6 that I have or I haven't in an affirmative way.  
7 It's just a -- I comment on a lot of stuff, if  
8 anyone looks. I just don't have a recollection.  
9 But I did not search Facebook, either accounts,  
10 so...

11 Q. Okay. And you don't have an Instagram  
12 account?

13 A. I do not.

14 Q. Do you have a blog of any kind?

15 A. No.

16 Q. A website?

17 A. I had a website for my campaign. It's  
18 been inactive since the election was over in 2018.  
19 That's one of the reasons why I couldn't retrieve  
20 any information from that website, because I no  
21 longer paid to maintain it.

22 Q. So you tried to look on it for responsive

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1 material and you couldn't?

2 A. I didn't look because it's inactive and I  
3 didn't pay for it.

4 Q. Okay. Any other accounts or anything else  
5 that you searched for responsive documents?

6 A. I have no other social media accounts.

7 Q. Any other kind of account?

8 A. Can you be more specific?

9 Q. Besides what we've talked about today, is  
10 there any other location that you searched for  
11 responsive documents?

12 A. My personal dwelling.

13 Q. Your garage, right, you mentioned?

14 A. And my house, as well. I mean, my house  
15 is part of my personal dwelling. But I  
16 specifically looked in the garage because that's  
17 where I have boxes with campaign stuff in them,  
18 but they were signs and stickers and things of  
19 that nature.

20 Q. Okay. So let's go to the last page of  
21 this document. And this is your -- this is the  
22 response that was given to us. And in your

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1 response to the subpoena you said, "Councilmember  
2 John Moss indicates he does not possess any  
3 responsive documents."

4 MR. BOYNTON: And I'm going to put on the  
5 record here that this is in the context of my  
6 office facilitating responses that Council members  
7 are providing to you in an effort to just work  
8 through a process where the City Attorney's Office  
9 was unable to represent the Council members in  
10 their individual or personal capacities.

11 So when we were -- and I will tell you  
12 that my office generated that term based upon  
13 information we received from the Council member as  
14 to his personal information.

15 A. Correct.

16 MR. BOYNTON: We took the subpoena to mean  
17 personal information. And that's what the  
18 response indicates.

19 Q. Okay. So you had indicated earlier that  
20 you thought maybe this wasn't -- this is not what  
21 you had said?

22 A. Well, in that context, yes. In the



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1 context -- because my response was that any  
2 government -- in my Council capacity information  
3 that I would have would either be in my vbgov.  
4 account or in the councilmail archive account.  
5 And that's where it would be.

6 I possessed -- and this deals with what do  
7 I personally possess physically or, I guess you  
8 could say, electronically myself. And that is the  
9 answer that is correct.

10 Q. Did you personally withhold any documents  
11 that were responsive to any of these production  
12 requests --

13 A. Not to the best of my knowledge.

14 Q. -- for any reason?

15 Sitting here today, after we've gone  
16 through this, can you think of any documents you  
17 may have that are responsive to the production  
18 requests that you did not produce to the  
19 plaintiffs?

20 A. The only thing I think I could do is I  
21 could do a comprehensive search of my hard drive  
22 using more keywords and VF keywords you would want

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1 me to make sure that I used. I would be happy to  
2 apply those to my hard drive and provide any  
3 material that showed up.

4 Q. Okay. And you didn't search your Facebook  
5 account?

6 A. I did not.

7 Q. But that account is public?

8 A. Both are public. And all comments are,  
9 per the usual precedent, retained. I don't sensor  
10 or otherwise edit what goes on there.

11 Q. Do you ever conduct city business via text  
12 message?

13 A. I have, yes.

14 Q. And do you retain those text messages?

15 A. Two ways I do. One, where I -- I do  
16 retain some, which is why I have them in my phone.

17 And, secondly, when I think there is a  
18 long dialogue of those, I will cut and paste them,  
19 put them in an email, and send them to the  
20 councilmail.com archive. Those are emails that I  
21 don't -- text messages I don't delete.

22 And as of today, we've just established a

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1 new service which makes it easier for us to  
2 actually automatically send them to an archive  
3 text account. But that just started today, just  
4 so you know. But, yes, I have conducted city  
5 business by text.

6 Q. What kinds of things do you do over text  
7 messages?

8 A. It could be I'm planning to put something  
9 on the agenda. It could be I received -- I cut  
10 and pasted a text from a constituent about an  
11 issue and I send it to Nancy Bloom or the  
12 appropriate department person to answer. It could  
13 be a text I got from a Council member. It could  
14 be about an appointment, which would be a  
15 privileged communication. It could be about a  
16 personnel matter, which would be a personnel  
17 matter, and I often try to put that exemption,  
18 assertion, on that text message so people know at  
19 least I'm making that claim. Obviously, someone  
20 else has to adjudicate that. That's a personnel  
21 matter.

22 It could be anything. You know, it's a

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1 full -- in today's world, it's a -- it could be  
2 about agreeing to go speak someplace as a Council  
3 member. It's a lot. I would almost say it's the  
4 full spectrum of the city's business, I suspect,  
5 at any -- some point in time I have done a text  
6 message on, I would suspect.

7 Q. Have you ever sent a text message about  
8 changing to a single-member district system?

9 A. Not that I can recall. I did look for  
10 that. It's -- not that I can recall, but I may  
11 have.

12 Q. So I want to understand how these text  
13 messages are captured by the city. Is every -- is  
14 any text message you send that discusses city  
15 business captured by the city in any way?

16 A. Not all. They're still on my phone, so  
17 they can be downloaded. Some I do, like when I  
18 say I'm going to go speak someplace. But if  
19 they're big, controversial issues, like when we  
20 were doing the arena, I tend to capture those,  
21 screen capture them, copy and paste them into an  
22 email, and send them to the councilmail archive.

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1 Q. So it's just you decide when to capture  
2 the text messages and send them?

3 A. That's correct. There is no city policy  
4 that certainly that we have to retain either  
5 personally, which I have. And I'm thinking maybe  
6 a couple thousand, maybe, on there. I don't know.  
7 Quite a few.

8 Q. So a moment ago you told me that you  
9 deleted your text messages?

10 A. I said except for -- I'd really be careful  
11 about when I go after my Council stuff.

12 Q. I just want to clarify. So you don't  
13 delete any messages that may or may not discuss  
14 city --

15 A. Correct.

16 Q. That may discuss city business?

17 A. Yes.

18 Q. What if it's a text message that discusses  
19 city business but it's not one that you screenshot  
20 and send in to the city?

21 A. That would still be on my phone.

22 Q. Okay.

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1 A. I will --

2 MR. BOYNTON: Go back and look?

3 Absolutely.

4 A. As a matter of fact, you can download it  
5 today before I leave.

6 Q. So you had mentioned you searched your  
7 text messages in your personal capacity. Did you  
8 search the text messages on your phone that are  
9 related --

10 A. When you use a search feature, it doesn't  
11 discriminate between which texts you're searching  
12 for. I mean, you don't, ah-ha, search city  
13 business where it says personal business. You can  
14 just look for a topic or a subject, and it tells  
15 you everything that's responsive. Maybe there is  
16 another way to do it. But I'm happy when I leave  
17 here today that they can download them all and  
18 they'll screen them and give you the parts that  
19 they think is applicable to the scope. But I do  
20 not recall any text messages relative to the scope  
21 of this.

22 And my record retention, I think, as a

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1 City Council member, I think is three years, if I  
2 remember correctly.

3 MR. BOYNTON: I don't have it in front of  
4 me. There is a period.

5 Q. Are you aware of whether other City  
6 Council members conduct city business over text  
7 message?

8 A. Do I have -- has someone personally  
9 testified to me that they use text -- what do I  
10 think or what do I know?

11 Q. Do you ever text any other City Council  
12 members about city business?

13 A. Yes.

14 Q. Who?

15 A. Probably Jessica Abbott, Aaron Rouse, the  
16 Mayor, maybe -- probably Louis Jones. Might be  
17 some others, but those are ones I can consciously  
18 recall.

19 Q. Mayor Dyer?

20 A. Correct. As a matter of fact, I just sent  
21 him one the other day.

22 Q. What kinds of things do you text him

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1 about?

2 A. Well, city business, I mean. I could  
3 thumb through, but it wasn't about voting. But it  
4 might be something about the -- well, I did talk  
5 to him about the City Manager. I won't go into  
6 the details. But his resignation would be  
7 something I had exchanged emails on, along that  
8 particular issue recently.

9 Q. Texts or emails?

10 A. Both.

11 Q. Who did you text about the City Manager  
12 resignation?

13 MR. BOYNTON: I think you can say who you  
14 texted. The contents would be legislative  
15 privilege.

16 A. Definitely Aaron Rouse, and the Mayor, and  
17 Jessica Abbott, and possibly Louis Jones. I'm not  
18 saying for certain. As a matter of fact, I texted  
19 Aaron Rouse during the actual executive session.

20 Q. Okay. Did Mr. Hansen resign or was he  
21 fired?

22 A. He resigned.



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1 Q. Besides Dave Hansen, any other things you  
2 can recall that you texted about with other City  
3 Council members?

4 A. Possibly the arena. I'd have to go back  
5 and look. I don't want to look like I'm trying to  
6 be evasive, but, gosh, there is so much business  
7 that we conduct. Saying it's like this, this, or  
8 this -- a number of items is probably the best way  
9 to say. I don't really restrict myself as to  
10 what, but it would be the full spectrum of  
11 activities.

12 Q. Would it be fair to say that it's fairly  
13 common for City Council members to text about city  
14 business?

15 MR. BOYNTON: I object to the form of the  
16 question. I think you need --

17 Q. I'm speaking --

18 MR. BOYNTON: I'm objecting to the form of  
19 the question.

20 MS. HARLESS: No speaking objections.

21 MR. BOYNTON: I'm objecting to the form of  
22 the question.

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1 MS. HARLESS: No speaking objections.

2 MR. BOYNTON: -- as to --

3 MS. HARLESS: No speaking objections.

4 MR. BOYNTON: I'm going to finish my  
5 objection.

6 MS. HARLESS: Objection to form.  
7 Otherwise, it's a speaking objection.

8 MR. BOYNTON: You yesterday spent about  
9 six hours talking about argumentative and asked  
10 and answered and a bunch of other things.

11 MS. HARLESS: Those are objections.

12 MR. BOYNTON: I'm putting mine on the  
13 record if you'll let me do it.

14 MS. HARLESS: No. The objection is  
15 objection to form.

16 MR. BOYNTON: I'm putting my objection on  
17 the record.

18 MS. HARLESS: You did.

19 MR. BOYNTON: No, I have not yet because  
20 you interrupted me. When you're done talking --  
21 he's not talking again until I put my objection on  
22 the record.

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1 MS. HARLESS: You did.

2 MR. BOYNTON: I have not yet.

3 MS. CHLOPAK: You don't need to raise your  
4 voice.

5 MS. HARLESS: You don't have to scream  
6 every objection.

7 MR. BOYNTON: I am responding in tone with  
8 her tone to me.

9 MS. HARLESS: No, you're not.

10 MR. BOYNTON: My objection is that the  
11 question is unclear and vague; and, therefore, I  
12 object to the form of the question.

13 MS. CHLOPAK: You're shouting.

14 MR. BOYNTON: I've just done it. I am not  
15 shouting. Thank you.

16 MS. CHLOPAK: Be professional. Thank you.

17 MR. BOYNTON: I'm waiting on her being  
18 professional. Thank you.

19 MS. HARLESS: I've done nothing  
20 unprofessional.

21 MR. BOYNTON: You've interrupted me and  
22 tried to prevent me from putting an objection on

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1 the record. That's unprofessional.

2 MS. HARLESS: I did not. You're doing an  
3 improper speaking objection.

4 MR. BOYNTON: I disagree. I can object to  
5 the form of the question for vagueness and --

6 MS. HARLESS: Court reporter, can you  
7 please repeat the question? I don't remember what  
8 it was at this point.

9 THE REPORTER: "Would it be fair to say  
10 that it's fairly common for City Council members  
11 to text about city business?"

12 A. I do not have a basis upon which to answer  
13 your question. I can't speak for what's common  
14 for other Council members. I don't have a state  
15 of mind to make that kind of assessment.

16 Q. Is it common for you?

17 A. Yes.

18 Q. And you've given me the names of at least  
19 four other City Council members that you text  
20 about --

21 A. That I have texted to, not texted about.

22 Q. That you text city business about?

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1 A. Correct.

2 Q. As far as you can recall, have you ever  
3 texted any other City Council members about  
4 changing to a single-member district system of  
5 election in Virginia Beach?

6 A. To the best of my recollection, I cannot  
7 give you an answer that I have or haven't. My  
8 memory is not that good. But I may have, but I  
9 can't affirmatively say that I have.

10 Q. And if you say you may have, would those  
11 texts have been discovered when you searched your  
12 text messages?

13 A. Should have been, yes, but I was going to  
14 say -- you're asking me a question and I'm trying  
15 to answer it. It didn't show up or I would have  
16 provided it. But it's more likely that would have  
17 been a personal conversation versus a text  
18 message. I have talked with many Council members  
19 about the -- in-person on the election system. My  
20 views are well-known.

21 Q. Who are the people you've talked to about  
22 the election system?

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1           A. Well, probably every single member because  
2           we've talked about it in the informal session. So  
3           in that sense they've all heard my views, which  
4           are well-known.

5           Q. So you're saying every single current  
6           member of City Council?

7           A. Yes, because we've had informal session  
8           discussions on this, and I've expressed my views.

9           Q. Have you discussed it with any former  
10          members of the City Council?

11          A. Let's see who just left. Well -- because  
12          they would have been in those informal sessions,  
13          too. So John Uhrin would have heard that.

14          Q. Can you spell that name?

15          A. U-H-R-I-N.

16                 And I'm trying to think who -- there would  
17          have been Shannon Kane. That's another one.  
18          She's a former Council member. I'm trying to  
19          think. We had so many changes. Anyone who has  
20          served since I've been on City Council has had  
21          conversations collectively and in formal session.  
22          I have been in favor of a different system for a

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1 long time. It's not a new position that I've  
2 taken. It's one I publicly -- I know I have  
3 expressed on Facebook at some point. And I've  
4 done it in many candidate forums I've expressed my  
5 view.

6 Q. When you say you've expressed your view at  
7 candidate forums, do you remember any specific  
8 candidate forums?

9 A. No, but we get -- some ask it more than  
10 others. Probably the one that I definitely know I  
11 was asked was the forum held at Seatack Elementary  
12 School. I can't remember the sponsoring  
13 organization. I know it must sound terrible I  
14 can't recall who sponsored it, but I can't.

15 Q. Was that in 2018?

16 A. Correct.

17 Q. Was it videotaped in any way?

18 A. Not by me. I can't see who else might  
19 have videotaped it, but it wasn't videotaped by me  
20 and I don't have a videotape of it.

21 Q. Was there any kind of transcript that was  
22 taken at that --

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1           A. I've never known a candidate's forum in  
2     Virginia Beach, at least on my part, that's had a  
3     transcript done. That doesn't mean that people  
4     videotaped it. I have no knowledge of a  
5     transcript of those events --

6           Q. Okay.

7           A. -- ever being transcribed.

8           Q. Can you remember any other candidate forum  
9     where you may have discussed single-member  
10    districts?

11          A. No, but if they asked it I would have  
12    answered it.

13          Q. Okay. Can you remember the name of any  
14    other former City Council members that you may  
15    have discussed single-member districts with, going  
16    back -- I know you were first selected in --

17          A. Well, as a matter of fact, this goes  
18    back -- well, now she's deceased, but the Mayor --  
19    it would be Meyera Oberndorf; she's deceased -- or  
20    anyone who served on City Council from '86 through  
21    '90 because that was a hot topic. You know, we  
22    would have talked about it during that timeframe.



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1 I don't know how many of those people are still  
2 living.

3 John Baum has passed away. Al Balko has  
4 passed away. Meyera has passed away. John Perry  
5 has passed away.

6 Then I served again in -- started in --  
7 was it '91-'92? Served again.

8 I served on -- there is a document that  
9 was done -- I don't possess it -- that was done by  
10 the Mayor. It was -- when Al Balko didn't win  
11 his -- won his district but lost the election,  
12 there was a Mayor's Commission on Reapportionment  
13 or something. I can't remember the exact name.

14 Don Clark -- you might remember Don Clark  
15 who's a senior lawyer. He chaired it. It was all  
16 about, you know, the voting system, should we  
17 change it. We actually had a referendum. I can  
18 look at those results. But I served on that  
19 Commission that made the recommendation to go to a  
20 modified award system. That goes back a ways.  
21 You probably have that documentation, I suspect.

22 Q. Did you retain a copy of that document?

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1           A. No. Actually, that's one of the things I  
2       was looking for I thought maybe I had. But that  
3       goes back a long ways. That was '80 -- maybe  
4       1990, '91. It was after that 1990 election, that  
5       Commission and Don Clark chaired it. There was a  
6       formal report issued, which I'm sure the City  
7       Clerk would have, but I do not have one.

8           Q. And what did the formal report recommend?

9           A. We went to a referendum. This is my  
10      recollection of what it recommended, so give me a  
11      little break on time. We actually had a  
12      referendum to go to a seven member ward district  
13      system of equal population and retaining the four  
14      at-large that went to -- that passed. It went to  
15      the General Assembly. It passed in the House of  
16      Delegates. It was sidetracked for a period -- you  
17      can use the pejorative if you like -- by then  
18      Senator Stolle, who's now the Sheriff, I suspect  
19      somewhat at the assistance and help of then Vice  
20      Mayor, I think it was, Will Sessoms.

21                 And it went from when it passed in the  
22      House to in the Senate saying to keep the all

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1 at-large system but to make the districts all  
2 equal population, which is what -- this is the  
3 system we still have today.

4 Then I believe there was another  
5 referendum -- don't hold me to the -- and I wasn't  
6 here at that time -- and the city -- wasn't a  
7 resident here -- that failed to change the system.  
8 People were asked once again if they wanted to  
9 change, and the answer was no.

10 And there has been several efforts, you  
11 know, off and on for people to go back. I have  
12 another referendum to that end, but that hasn't  
13 materialized at this point.

14 Q. Okay. So the formal report first  
15 recommended that the city hold a referendum to  
16 switch to seven single-member districts and four  
17 at-large seats?

18 A. Correct. That's my recollection.

19 Q. Do you remember how that recommendation  
20 was reached?

21 A. Well, they had -- it was the  
22 recommendation of the people who served on that

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1 Commission.

2 Q. Right.

3 So how did you decide -- you were on that  
4 Commission, correct?

5 A. Correct. It was a long time ago, so give  
6 me some break.

7 Q. To the best of your recollection, how did  
8 you decide that switching to seven single-member  
9 districts and four at-large would be a good idea?

10 A. Well, first of all, we thought -- one of  
11 the biggest things that was driving it, in my  
12 personal opinion, from my point of view, is that  
13 the all at-large election system created  
14 disadvantages from a reduced competition because  
15 of money. That was the driver.

16 It costs so much money to run an all-city  
17 campaign that, really, it disenfranchised people  
18 who were not well-aligned with special interests  
19 that have the money. So, therefore, special  
20 interests were getting a disproportionate  
21 representation on the Council because of how hard  
22 it was to campaign, you know, 200-plus square

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1 miles of the city, and that single districts would  
2 provide more competition because it would reduce  
3 the capital barriers to entry to campaign. You  
4 could effectively campaign door-to-door, much like  
5 you can think of General Assembly districts do;  
6 and, therefore, we would get a more competitive  
7 system and people would benefit from composition  
8 that that would allow.

9 That was my entering argument. And, of  
10 course, the thing that stimulated it was that Al  
11 Balko was a very popular Council member in his  
12 district, obviously wasn't perceived well by  
13 special interest at large, and he won his district  
14 but he lost the election. And that kind of -- so  
15 that -- but my view was to reduce the barriers  
16 that -- the money faces when you're trying to run  
17 a city at-large election and it basically  
18 disenfranchises people that have good messages but  
19 they can't effectively reach out to the public who  
20 they want to serve because it's such a huge  
21 dispersed community. And it is a barrier, the  
22 entry, to this day.

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1 Q. Can you spell the name Al Balko?

2 A. It's Al, A-L. I think Albert was his full  
3 official name, but don't hold me to that. Balko  
4 is B-A-L-K-O. He's deceased, just so you know.  
5 His nickname was the Balko Brigade. I remember  
6 that from his campaign. That was his slogan, the  
7 Balko Brigade. Nice gentleman who was a retired  
8 AT&T manager.

9 Q. So you mentioned a couple of times you  
10 thought -- your biggest reason for supporting the  
11 change to single-member districts was that the  
12 at-large system reduces competition, correct --

13 A. Correct.

14 Q. -- because it costs so much money --

15 A. Correct.

16 Q. -- to run?

17 And people aligned with special interests  
18 have advantages; is that correct?

19 A. Special monied interest. They provide the  
20 money for the campaigns, and so, therefore, that  
21 creates a disadvantage for people who aren't  
22 willing to align themselves with the -- the view

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1 and the advocacy of the monied interest in the  
2 city.

3 Q. So when you say special monied interest,  
4 do you have anyone in particular in mind?

5 A. You can probably use a recent campaign  
6 because I was the target of one of those. Bruce  
7 Thompson is one of them. But if you could go back  
8 in time, you could find -- you know, change the  
9 name, R. G. Moore. You know, you can -- the  
10 Chamber. You know, the political PAC of the  
11 Chamber.

12 Q. When you say the Chamber --

13 A. The Chamber of Commerce. Their political  
14 PAC is definitely -- Board of Realtors, their  
15 political PAC. You know, you just have to go and  
16 look at the financial records of those candidates  
17 and you can see the people that provide those  
18 big-dollar contributions. It makes it very --  
19 basically, you know, that's how it works. It's  
20 politics. But it does -- but when you have to run  
21 at large in a big city and you want to run a  
22 campaign, and you don't have those, if you can't

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1 communicate with the voters, you can't win someone  
2 over you can't market to. So they have a  
3 marketing advantage and a communication advantage  
4 with the public through their financial backers.  
5 And that would be dissipated -- not eliminated but  
6 would be dissipated or mitigated by district  
7 systems.

8 Q. So you just mentioned that Virginia Beach  
9 is a big city?

10 A. Correct.

11 Q. Are there any other challenges that you  
12 faced running for an at-large seat in such a big  
13 city?

14 A. Well, since the jobs are part-time and you  
15 have a full-time employment, so if you -- so then  
16 you're just -- you're time-limited. So if you're  
17 dollar-limited and you're time-limited, you are  
18 obviously -- you have a much more difficult thing  
19 to do. But you know that going in up front. But  
20 if you're asking me what are the barriers, it's  
21 just your physical time because you're working,  
22 and the time you have to spend to campaign is



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1 reduced. That's -- so time is a constraint.

2 Q. Is it difficult to campaign across the  
3 whole city given how large it is?

4 A. I'm an at-large member, so I can tell you  
5 that it is. And so that's where you have to look  
6 at -- the fact that it's hard for me doesn't mean  
7 the at-large system is inherently flawed. That's  
8 another conclusion I would not draw, that it's the  
9 wrong system, because the public gets to decide  
10 that, I think. But it certainly makes it  
11 difficult for me to -- how much I can go  
12 door-to-door is evenings and weekends and canvass  
13 or how much time you have for campaign meetings or  
14 go to different forums and be out in the  
15 community, that's all true.

16 And I'm here, so that's proof it can be  
17 done, but it takes a lot of work, and it takes a  
18 long time. It's not -- not easy, and it's not  
19 been replicated very often. That a poorly  
20 financed candidate makes it to the City Council is  
21 an anomaly versus a pattern.

22 Q. Uh-huh.

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1 I want to go back to what you mentioned  
2 about the Commission that recommended the change  
3 to the seven single-member districts and four  
4 at-large. You said that referendum was passed?

5 A. Correct.

6 Q. And, then, it went to the General  
7 Assembly?

8 A. Correct.

9 Q. And it was passed by the General Assembly,  
10 and, then, it got sidetracked for a period?

11 A. No. It didn't get -- it didn't pass -- I  
12 said it passed in the House of Delegates in the  
13 General Assembly. Glenn McClanan, then Delegate  
14 McClanan, was the sponsor of that and got it  
15 through the House, and it passed. It then crosses  
16 over, you know, to the Senate. And in the Senate,  
17 as I mentioned, then Senator Stolle, now Sheriff  
18 Stolle, basically highjacked the thing. That's my  
19 pejorative characterization of it.

20 I'm sure back then Vice Mayor Sessoms had  
21 a lot to do with that because this would have  
22 definitely been a change of the power structure

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1 they got it converted to. We'd still have an all  
2 at-large district system -- I mean, an all  
3 at-large voting system -- excuse me -- but that we  
4 would have -- the districts would be of equal  
5 population.

6 An argument had been -- there was a  
7 borough called Blackwater, and it had about, you  
8 know, probably less than 4,000 people in the whole  
9 thing, but they had a Council member. And,  
10 obviously, the number of people that wanted to be  
11 considered to be a Council member among those was  
12 very small. So while you had a choice to choose,  
13 you really had no choice. Right?

14 Q. What were the demographics of Blackwater?

15 A. Mostly agricultural farmers. It's a very  
16 rural area even today. I couldn't tell you the  
17 actual ethnicity or anything, breakup of it, but  
18 it was -- until we went to the seven district  
19 system, Blackwater went away as a district seat.  
20 And what was then called -- you had Princess Anne  
21 and all that and Pungo all became one big  
22 district, now called the Princess Anne district,

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1 because you had to have equal population.

2 The last time we had a redrawing of the  
3 districts was after the 2020 -- after the 2010  
4 census they redrew the districts, and you now have  
5 the district names that you have today.

6 Q. So I want to ask you a little bit about  
7 Senator Stolle. You said that Senator Stolle  
8 highjacked the change of the electoral system.  
9 What did you mean by that?

10 A. Well, he didn't honor the voters' will to  
11 go to a district system. And he chose to decide  
12 that what the voters voted for is not what they  
13 needed. I call that highjacking because the  
14 voters expressed what they wanted, and he chose  
15 that that's not what they needed. To me, that's a  
16 highjack.

17 Q. Why do you think he did that?

18 A. Well, my personal view is --

19 Q. Your personal view.

20 A. My personal view --

21 MR. BOYNTON: Personal view only.

22 A. Personal view is he and the people that

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1 got him to do that, which I have my own suspicions  
2 but no proof, did not want the power structure of  
3 the Beach to be disrupted.

4 Q. Why?

5 A. Well, because they're going to lose their  
6 advantage to make decisions in the city, and then  
7 it's going to be more competitive. And if you had  
8 a monopoly and you pretty much can control the  
9 majority of Council by how you finance campaigns,  
10 why would you want to volunteer and support a  
11 system that is going to change the balance of  
12 power on how -- the power of the voters in the  
13 city? That's a disruptive influence. And people  
14 tend to not like change. That's my personal  
15 opinion.

16 Q. Okay.

17 A. But it's nothing to do with  
18 disenfranchising people. It's they didn't want  
19 something that would change how power was  
20 distributed and where it rests in the city.

21 Q. So besides Senate Stolle, you mentioned  
22 Vice Mayor Sessoms at that time?

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1           A. At that time. I think he -- I believe --  
2           I can't prove this, but I don't believe he acted  
3           on his own. I do believe those people had  
4           communications, hey, this isn't what we want,  
5           despite what the people said. But that's just my  
6           suspicion.

7           Q. Is there anyone else you think was  
8           communicating with Senator Stolle?

9           A. I have no idea, but I'm certain -- I'm  
10          fairly certain he was. That's my personal  
11          opinion. I have no documentation to that effect.  
12          But it's history. But it's interesting.

13          Q. You mentioned that Senator Stolle is still  
14          involved in city government, correct?

15          A. He's the current Sheriff, which is an  
16          elected constitutional office in the Commonwealth  
17          of Virginia. It has no legislative authorities;  
18          just the Sheriff.

19          Q. All right. I want to go back for a  
20          second --

21          A. Okay.

22          Q. -- and ask you a question about your

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1 personal email account.

2 You only use your personal email account  
3 to conduct city business, correct?

4 A. Correct.

5 Q. You don't use your virginiaibeach.gov  
6 account, correct?

7 A. Only to the extent that it forwards email  
8 to my personal account, correct.

9 Q. Have you ever used any other email  
10 account, besides your personal email account or a  
11 virginiaibeach.gov account, to conduct city  
12 business?

13 A. I don't have any other personal email  
14 accounts. I had a cox.net account many, many  
15 years ago, but I switched providers. I haven't  
16 had that for, probably, four or five years, I  
17 think. It's been a long time since I had a  
18 cox.net account. I don't even have access to that  
19 account. So I'll tell you I didn't even search  
20 that because I don't use it and haven't used it  
21 and don't have that service provider.

22 Q. Why do you use your -- only use your

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1 personal email and not the vb.gov account?

2 A. Because there is no legislative  
3 requirement that I do so. It's convenient.

4 Q. Just personal preference?

5 A. It's convenient. That's why I have to  
6 religiously copy to councilmail, whatever that  
7 thing is when I send stuff out, because if it  
8 comes from the vbgov account and I send it back  
9 out and copy to that account, then it's a closed  
10 loop.

11 Q. So I want to understand that. If you  
12 could explain, how are your -- how are emails sent  
13 from your personal email account captured by the  
14 city's document system?

15 A. When I go into my account on the copy to  
16 line or the blind copy to line, there is an  
17 archive account that the clerk maintains. It's  
18 councilmail@vb.com, I think it is.

19 MR. BOYNTON: vbgov.com.

20 A. vbgov.com. And that's where they go to.  
21 And I just send a reply. If I don't reply to the  
22 email, then I just delete it because I know where



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1 it came. I don't retain something I don't respond  
2 to. Like I got, hey, we're doing a -- a good  
3 example would be Public Affairs Office,  
4 Communication sends out all these notices: city  
5 event, city event, city event. I don't retain  
6 those. I just (indicating) because I'm not  
7 responding to them. It's just information. They  
8 put it out. They have it. All Council members  
9 got it, so it's going to City Council. I know it  
10 came through vbgov. I just swipe those and make  
11 them go away.

12 Q. Does anybody else retain that email?

13 A. Those emails would be retained.

14 MR. BOYNTON: They're sent through the  
15 vb.com system is what he's telling you.

16 A. They go from vbgov.com to City Council.

17 Q. I understand that. I'm just trying to  
18 understand if there's any kind of gap between what  
19 is being retained.

20 So any email that you reply to, in order  
21 for it to be recorded in -- captured in the city  
22 system, you have to cc the email account?

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1 A. Correct.

2 Q. Are there any emails that you send that  
3 are city business that you do not cc the city  
4 email account?

5 A. I will never say that I've never not done  
6 it, but, to the best of my knowledge, I have not  
7 consciously omitted providing it.

8 Q. To the best of your recollection, have you  
9 ever emailed anyone about changing to a  
10 single-member district system for City Council  
11 elections in Virginia Beach?

12 A. I cannot recall that specifically. I'm  
13 not saying I didn't; I just can't recall.

14 Q. You are currently an at-large City Council  
15 member for the City of Virginia Beach, correct?

16 A. Correct.

17 Q. How long have you held that position?

18 A. I was elected to this position in 2011 in  
19 a special election. And I took office on the  
20 Thursday after the election.

21 Q. So you've held the at-large seat from 2011  
22 to the present?

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1           A. Correct. I ran two reelection campaigns,  
2           2014 and 2018.

3           Q. And, then, prior to the current time  
4           period, you also served on the Virginia Beach City  
5           Council twice before?

6           A. Correct. I served from 1986 to 1990 as  
7           the Kempsville borough representative. That's  
8           back when we had the borough -- the borough still  
9           existed before we went to the legislative change  
10          that we have today.

11          And, then, I was elected in 1992 in the  
12          at-large race. And I served until 1995, March  
13          15th, I believe it was, when I resigned to  
14          relocate to Tennessee.

15          Q. Okay. So the first time you held office  
16          was 1986 to 1990?

17          A. Correct.

18          Q. And you were elected to that position or  
19          were you appointed?

20          A. Elected.

21          Q. And, then, the second time?

22          A. Elections were in May at that time, just

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1 so you know. We've changed the time when Council  
2 was elected. They were elected in May in that  
3 timeframe.

4 Q. When was the time of the elections  
5 changed?

6 A. I'd have to rely upon -- I couldn't tell  
7 you. But sometime -- I don't know the exact date  
8 when that was changed, but it was changed to  
9 November. I can't give you the date. You'll have  
10 to get that from someone else. I can't recall. I  
11 do know when we elected the Mayor in -- for the  
12 first -- gosh. I don't want to say. I just can't  
13 recall.

14 Q. Okay. Then the second time you were on  
15 the City Council was 1992 to 1995 at-large?

16 A. Correct.

17 Q. Were you elected in 1992 --

18 A. Correct.

19 Q. -- or were you appointed?

20 A. Elected. Yes, ma'am.

21 Q. Why was there a gap between your time on  
22 the City Council between 1990 and 1992?

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1           A. One, I didn't get reelected. Special  
2 interest made sure I didn't come back. So I have  
3 personal experience.

4           Q. Which election was it that you lost?

5           A. That was 19 -- 1990.

6           Q. What is your personal view about why you  
7 lost that election?

8           A. It was two things. One, there was a lot  
9 of money spent to make sure we didn't come back  
10 because only one of the incumbents came back.  
11 That was Nancy Parker. Very close race,  
12 400-something votes.

13           We also -- that election had been preceded  
14 by the riots at the oceanfront. And I think the  
15 public, rightfully so -- if you run a ship  
16 aground, the people hold you responsible. So all  
17 the people that were up for reelection, save one,  
18 bit the dust, if I remember correctly.

19           MR. BOYNTON: Politically speaking, to be  
20 clear.

21           A. Yes. Politically speaking. Yes.

22           And the public felt, obviously, we didn't

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1 do a good job, but also a substantial sum of money  
2 was also spent to make sure we didn't come back.

3 Q. So when you say a substantial amount of  
4 money was spent to make sure you didn't come back,  
5 who was spending that money?

6 A. Well, you can look -- you have to go back  
7 and look at the financial records, but it's the  
8 same group -- it would be different names, but the  
9 same market segments: developers, realtors,  
10 because development was a big issue at that time.  
11 You have to go back to '86 and understand the  
12 election -- if I could digress for a moment, if  
13 that's permissible.

14 Q. Briefly, yes.

15 A. In 1986, or prior to that, there had been  
16 a lot of high-density development approved in the  
17 City of Virginia Beach. We grew by a phenomenal  
18 rate. We were growing by 20-, 30,000 people a  
19 year at some of those points in there. This is a  
20 consequence somewhat of the Reagan defense boom.  
21 But, you know, also, interest rates were kind of  
22 high, too, so people wanting to sell product,

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1 wanted to create a lot of high-density  
2 development.

3 You know, the public was really upset  
4 about it. They actually defeated, in 1985, a bond  
5 referendum for roads and schools and sewer.  
6 That's just how angry they were.

7 So in 1986, there were five of us that ran  
8 together as The Team For Responsible Leadership.  
9 John Perry, a good friend of mine, the first  
10 African American elected to City Council, the  
11 most -- oldest person ever first elected to City  
12 Council, retired history teacher at Kempsville  
13 High School, we ran together. It was myself,  
14 Barbara -- myself, John Perry -- gosh. That guy's  
15 name -- it will come back. Sam Meekins. Not Sam  
16 Meekins. Sam -- his brother's got the memorial  
17 named after him at the Veterans -- at the  
18 Convention Center. Sam -- I can't think of his  
19 last name. And Nancy Parker. Anyway --

20 Q. How many --

21 A. There were five of us. It was called The  
22 Team for Responsible Leadership. I don't have

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1     that brochure either. I wish I did. That would  
2     be a great thing to put up on a wall in a picture  
3     frame, but I don't have it.

4             And as a consequence, four of us got  
5     elected. And along with the Mayor, that gave --  
6     then -- excuse me -- Meyera Oberndorf gave us five  
7     votes.

8             Did I say we had five? That's close.

9             And, then, Bob Jones was an at-large  
10    Council member. And I negotiated in my house -- I  
11    lived in Thalia at the time -- that if we voted  
12    for him for Mayor that he would vote to make  
13    Meyera Vice Mayor.

14            This might be a story you've never heard  
15    before. We were in my living room. We negotiated  
16    that.

17            In fact, that did shift the balance of  
18    power. And Bob Jones more often than not voted  
19    with us. And we made a lot of changes: you know,  
20    sign ordinances, billboard ordinances, changed the  
21    nature about development. We made -- cost a lot  
22    of people probably money that we didn't even know



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1 in terms of what they couldn't accomplish. And  
2 that was a very good period, I thought, of the  
3 city.

4 But, nonetheless, that's the backdrop to  
5 give you. You put that in the backdrop of -- put  
6 the two together: the riot issue, which people,  
7 rightfully so, thought we didn't do what we should  
8 have done, those two things contributed along with  
9 a substantial sum of money.

10 But we won that race in 1986 on \$30,000,  
11 which is phenomenal. That just tells you how  
12 upset the public really was with the development  
13 that had preceded, and also building up the bond  
14 referendum that defeated in 1985 including  
15 schools, which are very popular in Virginia Beach.  
16 That just gives you an idea how upset people were  
17 with the status quo.

18 Q. Just a second ago you said people were  
19 upset about the riots and rightfully so. What did  
20 you mean by that?

21 A. I think they have -- our job as Council  
22 members first and foremost is always public

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1 safety. You know, I just come from a Navy  
2 background. You run a ship aground, I don't care  
3 who all didn't do their job; you know, the captain  
4 loses his job just -- because your job is to make  
5 sure that's not happening.

6 So people are holding us accountable for  
7 how we prepped for it, you know, why didn't we  
8 anticipate better, the police -- you can look at a  
9 lot of places. In the end, the buck stops at --  
10 it's the City Council who's ultimately  
11 accountable to the public. And they held us  
12 accountable, and they fired us.

13 And I really can't argue with their  
14 assessment, you know. I'm just saying that, on  
15 top of that, there was these other things going on  
16 that people certainly made sure -- and, as a  
17 matter of fact, one of the ads they ran back in  
18 1986, which was retracted when John Perry was on  
19 our ticket, they -- I don't know where they built  
20 it, but they did this -- they had us all  
21 characterized as monkeys. They had a monkey ad.  
22 It didn't last long on TV, as you can imagine.

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1 But they characterized the five of us running for  
2 election as monkeys, monkeying around, going to  
3 ruin the city. But that's what they used.

4 Well, obviously, clearly, you know, with  
5 an African American on our ticket, John Perry, you  
6 can imagine that that took on -- even then, that  
7 that had some kind of bad taste. I'll put it that  
8 way. Everybody can draw their own conclusions.  
9 But I think it probably helped us more than hurt  
10 us because in the end it was all the backlash just  
11 showing how arrogant some of those people were  
12 that they thought that that would -- that that  
13 would be an acceptable way of campaigning in the  
14 Beach, which it was not. They were highly  
15 ridiculed and castigated for that effort.

16 Q. You said the ad was on TV?

17 A. Yes. Not long.

18 Q. Was it in print anywhere?

19 A. I don't remember print, but it was run on  
20 TV. It was a TV ad.

21 Q. Do you know who paid for that ad?

22 A. I do not. I don't -- my memory of that is

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1 just not that good. I do remember the ad. I know  
2 it backlashed and it disappeared rapidly.

3 Q. Can you describe what the ad looked like?

4 A. It was five monkeys. Obviously, people in  
5 a suit and the (indicating) kind of thing, even  
6 the noises. It was pretty interesting. It's --  
7 and a vegetation kind of background. But just --  
8 I can't remember.

9 Q. Did it have your names?

10 A. I can't recall. I just can't recall. But  
11 I --

12 Q. Did it say Team for Responsible  
13 Leadership?

14 A. I can't recall that either. I just  
15 remember that the ad came out. We thought, oh, my  
16 gosh, how desperate can they be. And the backlash  
17 was huge. And it disappeared as quickly as it  
18 came along.

19 Q. What was the backlash?

20 A. Well, bad taste. I think there was some  
21 view by some that it was -- I don't think that was  
22 the case personally. But some people viewed it,

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1 because John Perry was on our ticket, that somehow  
2 it had a racial tone to it. I don't think that's  
3 true. I think -- I don't think they were being  
4 that malicious. I just think they were going and  
5 saying how can you show these people are a bunch  
6 of jokers, they're not serious. These are the  
7 people that you think can represent the city and  
8 run the city's business? They're going to monkey  
9 around and mess things up. I think that was the  
10 nature.

11 But there were parts of the community that  
12 certainly took it the wrong way and they took it  
13 in a different way. But needless to say, the ad  
14 disappeared as quickly as it arrived. And I think  
15 it helped us -- in all fairness, I think it helped  
16 us rather than hurt us.

17 MR. BOYNTON: So we've been going about an  
18 hour. Let's take a five-minute break, stretch our  
19 legs, use the bathroom, all that.

20 MS. HARLESS: I just want to ask one more  
21 question about his City Council -- earlier City  
22 Council time.

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1 Q. Why did your time on the City Council end  
2 in 1995?

3 A. I resigned. And I resigned because the  
4 Navy made me an offer I couldn't refuse. They  
5 said, We'd like you to go take this job out in  
6 Memphis, Tennessee, and if you do we'll send you  
7 to Harvard for a year later, and we'll send you to  
8 the National War College a year later. So I got  
9 two degrees out of it. And I went out and did a  
10 job out there that needed to get done. And it was  
11 good for me, good for my family. And I just made  
12 a choice. It wasn't an easy choice to make, but  
13 sometimes you've got to think about family  
14 considerations in the long-term.

15 So that's why I departed. It wasn't  
16 anything about frustration or I thought I was  
17 going to be -- you know, any of that kind of  
18 stuff. Other people were more disappointed that I  
19 left, and some were happy.

20 MS. HARLESS: All right. Good time for a  
21 break.

22 (A recess was taken.)

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1 Q. Okay. Ready?

2 A. Absolutely.

3 Q. All right. Why did you decide to run  
4 again for an at-large seat in -- was it 2011?

5 A. The special election -- that is correct.  
6 I had ran in the election in 2010. It was the top  
7 two. I was number three. And, then, Rita  
8 Bellitto resigned to relocate with her spouse.  
9 And people encouraged me. They thought I should  
10 run since I was the number three voter on the  
11 election in 2010. And with my wife's concurrence,  
12 I decided to run.

13 Q. Why did you decide to run?

14 A. Because I thought there was a voice that  
15 was not being heard on the City Council, and I  
16 thought I could be an effective and competent  
17 voice and push back on the status quo a bit.  
18 That's why I ran.

19 Q. What was the voice that you thought was  
20 not being heard on the City Council?

21 A. Fiscal responsibility; the average citizen  
22 who pays most of the bill but gets the least

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1 amount of the benefits. And I thought those  
2 voices were being emasculated by money interests,  
3 which I, you know -- the decisions being made were  
4 not in the public's best interest, and a  
5 counter-voice needed to be heard. Even if we  
6 weren't the majority, at least we got a chance to  
7 be heard on the dais.

8 Q. You said you also ran in the 2010  
9 election?

10 A. Correct.

11 Q. Was that for the at-large seat?

12 A. Correct.

13 Q. You lost that election?

14 A. Correct.

15 Q. Why do you think you lost that election?

16 A. The voters picked the other two people to  
17 be the top two. I mean, I can't -- I don't judge  
18 the mind of the voters. I just didn't do a  
19 successful job communicating why they should vote  
20 for me.

21 Q. What is your current salary as a member of  
22 the City Council?



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1 A. \$28,000 a year.

2 Q. And you mentioned earlier that you have  
3 other employment besides your position with the  
4 city?

5 A. That is correct.

6 Q. And what is that employment?

7 A. I am the Director of Submarine Warfare  
8 Requirements, Warfare Development and Readiness,  
9 for Commander Submarine Forces for the United  
10 States Navy.

11 Q. And how long have you been in that job?

12 A. Since March the 2nd of -- March the 11th  
13 of 2002.

14 Q. And it's based in Virginia Beach?

15 A. No. It's based in Norfolk, Virginia.

16 Q. Okay.

17 A. And Naval Support Activity Norfolk is  
18 where the Command is located.

19 Q. Okay. Let's switch back to your City  
20 Council job. What are your job duties as a City  
21 Council member?

22 A. To fulfill my oath of office. And more

Transcript of John D. Moss  
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1 specifically, to -- I'm a fiduciary agent for the  
2 public. I have an oversight role. And I have a  
3 legislative role. And all those are a part of my  
4 overall -- I would call my accountability to  
5 fulfill my oath.

6 Q. Anything else?

7 A. That's it.

8 Q. You'd agree that as a City Council member  
9 you have a lot of responsibilities, wouldn't you?

10 A. I have all the responsibilities vested in  
11 me in the Charter, and they are extensive.

12 Q. Do you think a City Council member is an  
13 important position?

14 A. It's a position of public trust;  
15 therefore, yes, it is an important position. Any  
16 position that can confiscate collectively other  
17 people's wealth and income through the power of  
18 the state is important.

19 Q. Do you communicate directly with  
20 constituents?

21 A. I certainly do. I maintain -- as a matter  
22 of fact, if you look at my Facebook, you'll see

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1 what I do. I hold town halls. I'll be speaking  
2 someplace on Saturday. I don't think anyone would  
3 call me a wallflower as a Council member.

4 Q. How often do you hold town halls?

5 A. Probably on a quarterly basis, I would  
6 say, but at least once every six months. And  
7 sometimes I'll hold a whole bunch in all districts  
8 in the same two-month period. Usually just before  
9 the budget I will hold a town hall in each of the  
10 seven districts just to get a feel for what  
11 people -- what's on their mind as we go forward  
12 for the budget process.

13 Q. Besides the town halls related to the  
14 budget, where do you usually hold the town hall  
15 meetings?

16 A. I hold them in libraries, and schools, and  
17 the EMS building on the Boulevard. Usually always  
18 public facilities are always open to the public.  
19 Then, of course, I speak at different breakfasts  
20 or evening engagements at different civic  
21 organizations, they'll invite me to speak at, like  
22 I'm speaking Saturday at an event.

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1 Q. What is the event you're speaking at  
2 Saturday?

3 A. Virginia Beach Taxpayers Alliance at  
4 Marian Manor on Saturday. But I've spoken at  
5 Ruritans, you know, all of the -- sometimes church  
6 groups, you know. It all depends. Wherever I get  
7 invited, if I have the time to make available I'll  
8 show up.

9 Q. So besides Facebook communications, town  
10 halls, and speaking events, are there any other  
11 ways you can think of that you interact with  
12 constituents?

13 A. Well, at the Council meetings itself. You  
14 know, after the Council meetings are over I'm  
15 always out in the crowd, you know, pressing the  
16 flesh, talking with people. Before the informal  
17 sessions I'm talking to people from the public who  
18 come and sit around the table. And, obviously,  
19 indirectly, at any time someone is watching us on  
20 TV or watching in the chambers, I guess you can  
21 say that we are interacting with the public,  
22 though not in an active way but in a passive way.

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1 They're hearing what we think. And sometimes  
2 they'll interact with us later.

3 Q. Do you ever text with constituents?

4 A. Not too much. I don't get much texts from  
5 constituents. A lot of emails from constituents  
6 because usually they come through vb.gov because  
7 they go to the web page. But, no, I do not get a  
8 lot of texts from constituents. I do get emails,  
9 but they usually, almost always, come through the  
10 vbgov. I get phone calls, too. There are people  
11 who like to call. I get quite a few of those,  
12 usually two or three a night.

13 Q. Have you ever run for any public elected  
14 office besides Virginia Beach City Council?

15 A. No.

16 Q. Have you ever been appointed to fill a  
17 vacant seat?

18 A. No.

19 Q. Have you ever endorsed a candidate running  
20 for a seat on the Virginia Beach City Council?

21 A. Oh, yes.

22 Q. Who?

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1           A. Well, I guess I ran with John Perry, so  
2           that would be the first place I'd start. That's  
3           an endorsement. I've endorsed Robert Dean. I  
4           endorsed Aaron Rouse. Gosh. I'm trying to think  
5           all the elections that have taken place.

6           Q. If you want, you can limit it to  
7           2016-2018.

8           A. Okay. Thank you. That will help me a  
9           little bit because I'm trying to go back.

10          Q. Let's limit it to the most recent time you  
11          were reelected.

12          A. 2018. I endorsed Aaron Rouse. I  
13          endorsed -- I'm trying to think who all ran in  
14          that race. Was it Shannon Kane? At the end I  
15          know I endorsed R. K. Kowalewitch because there  
16          was just no other good choices. That just tells  
17          you how bad the choices were.

18          Q. Did you endorse Sabrina Wooten?

19          A. I did not.

20          Q. Why?

21          A. I looked at her financial disclosures.  
22          She is backed by Bruce Thompson, the developer

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1 where she got her money. That is why I didn't  
2 endorse her.

3 Q. Why did that mean you didn't endorse her?

4 A. Well, because Bruce Thompson, one, ran a  
5 tremendous -- raised a lot of money that ran the  
6 negative campaigns against myself. And he  
7 certainly is one of those monied special interests  
8 which I talked to; and, generally speaking, that  
9 would be an automatic disqualifier for me almost.  
10 Someone who is backed by him is not somebody who I  
11 would support on a political basis because,  
12 obviously, we don't share the same views of the  
13 future. So that's me. Just a discriminator.

14 Q. Are you aware why Bruce Thompson backed  
15 Sabrina Wooten's campaign?

16 A. I can't read his mind. I only read what  
17 influence he exerts in the city and on the City  
18 Council, and that his views are not aligned with  
19 mine. But I have no idea as to why he -- I can't  
20 read his mind why he endorsed Sabrina. I don't  
21 know.

22 Q. Do you have a personal opinion of why he

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1 backed Sabrina Wooten?

2 A. I do not. I assume that she must be  
3 aligned with his interests, but I do not know why.

4 Q. Anyone else in the 2018 election that you  
5 endorsed?

6 A. Bobby Dyer for Mayor. I'm trying to run  
7 through all the candidates for all the races that  
8 happened. Oh. I endorsed Tim Worst -- that's  
9 W-O-R-S-T -- against Barbara Henley.

10 Q. Why didn't you endorse Barbara Henley?

11 A. We just have different political views.  
12 And Tim Worst was aligned with my -- with my  
13 thoughts that we don't need to be constantly  
14 raising taxes, that we're misusing or borrowing  
15 authority, and we weren't in support of, like, big  
16 projects that were taking place in the city, so it  
17 was just the political alignment of objectives.

18 Q. Uh-huh.

19 A. I'm trying to think if there was -- that  
20 comes to mind. I have to go back. Those are the  
21 ones I can remember.

22 Q. Okay. What about 20 -- what was the



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1 next -- the year before that?

2 A. It was 2014 is when I ran. 2014 is when I  
3 ran. But 2016, I wasn't in that race.

4 Q. Did you endorse anyone even though --

5 A. I endorsed Dane Blythe against Rosemary  
6 Wilson.

7 Q. Why didn't you endorse Rosemary Wilson?

8 A. The same reasons I wouldn't be endorsing  
9 Wooten. Her alignment of financial supporters  
10 were definitely not on the same political  
11 wavelength as myself.

12 Q. Did the same people support Rosemary  
13 Wilson as Sabrina Wooten?

14 A. I can't say all the same but some of the  
15 same.

16 Q. What are the same?

17 A. Bruce Thompson for one. That's enough.

18 Q. Any other people you can remember  
19 endorsing in 2019? Did you endorse Jessica  
20 Abbott?

21 A. I did. Thank you for helping me. I  
22 definitely endorsed Jessica Abbott. I think I

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1 endorsed Shannon Kane in that 2016 race, if I  
2 remember correctly.

3 Q. Why did you endorse Jessica Abbott over  
4 Amelia Ross-Hammond?

5 A. She was a -- not a light rail supporter,  
6 and Hammond was. That was the biggest issue. And  
7 I thought she had a -- she was more in touch with  
8 the interests that I had, my political agenda,  
9 than Ross-Hammond because she had a record. But  
10 she voted -- she voted for all those budgets with  
11 budget tax increases. That and light rail -- her  
12 fiscal positions and her support of light rail  
13 were more than sufficient to support Jessica over  
14 Ross-Hammond.

15 Q. And, then, what about 2014?

16 A. I can't remember that race. That tells  
17 you how awful that is. I can't even remember who  
18 all the candidates were. I know I ran myself, but  
19 I can't tell you who else was in the -- I just  
20 can't recall.

21 Q. What about 2012?

22 A. I wasn't -- I guess I was just on Council

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1 for that 2012 race, wasn't running. I can't  
2 recall. I know I didn't support the current --  
3 when the Mayor ran for reelection. I know that.

4 Q. Are you talking about Mayor Sessoms?

5 A. Yes. I would not have supported him for  
6 certain.

7 Q. You mentioned you endorsed the campaign of  
8 Aaron Rouse, correct?

9 A. Uh-huh.

10 Q. Why?

11 A. I thought he represented a fresh voice.  
12 He clearly wasn't being -- as a matter of fact,  
13 wasn't being supported by Bruce Thompson. Bruce  
14 Thompson, in fact -- I still have this letter --  
15 ran a personal letter with his financial  
16 disclosure on it telling him that John Moss,  
17 Rouse, all of us, would be the end of Virginia  
18 Beach if any of us got elected. So not being  
19 endorsed by Bruce Thompson is clearly a good  
20 reason to support someone.

21 Q. When you said that Bruce Thompson ran a  
22 personal letter --

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1           A. He had a big ad. It was, like, a letter  
2 he sent out to all his constituents, and he  
3 personally said who people should vote for and who  
4 they shouldn't vote for. And he called us The  
5 Magnificent Seven. And Rouse was one of those  
6 names that was on there. I do have that piece of  
7 literature, if you thought that was in the scope  
8 of the thing. I didn't see where they fell into  
9 the scope if you did. I still have that on my  
10 desk. I'd be happy to provide that. I didn't  
11 think it fell within this.

12           But that was something that he ran, and  
13 mailed out to all his friends I should say.  
14 That's how I got it. Someone sent it to me. I  
15 don't know who he mailed it to, but someone who  
16 got it provided it to me. That's how I got it.

17           But I just thought Aaron represented a  
18 fresh voice. Smart guy. Communicates well. And  
19 I think he has a different view than the good ol'  
20 boy network he often talked about during his  
21 campaign. And I couldn't agree with him more.

22           Q. What's the good ol' boy network?

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1           A. I talked about these monied interests, the  
2     Development Authority, these people that walk in  
3     there with their six votes and they, basically,  
4     listen to us but then they do what they want  
5     anyway. And that's a personal opinion, but I  
6     think it was a perception held by the public that  
7     these aren't people you can trust.

8           Q. Have you ever actively opposed a candidate  
9     running for City Council in Virginia Beach?

10          A. Can you define actively?

11          Q. Have you ever donated money to a campaign  
12     because you didn't want someone else's campaign to  
13     win?

14          A. I think every contribution you make is  
15     that case.

16          Q. Have you ever run an ad?

17          A. No. Not run an ad, no.

18          Q. Have you ever made a public comment  
19     against a particular campaign?

20          A. Yes. If you're going to ask me when, I  
21     can't recall. I know I've done Facetime videos  
22     for candidates where I've mentioned a candidate

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1 who I didn't want to get elected. If you -- if  
2 you ask me to account when and who it was, I  
3 can't, but they're out there on the public view.  
4 I don't have them. Some private -- private thing.

5 Q. When you said you've done Facetime videos,  
6 what does that mean?

7 A. You know, Facebook Live and you go out and  
8 you post it on your website -- not on your website  
9 but your Facebook site. I have those, but they're  
10 on Facebook. I don't have some archive video  
11 collection, something saved. But they're out  
12 there on my Facebook.

13 Q. All right. Have you ever personally  
14 contributed money to a candidate running for a  
15 seat on the Virginia Beach City Council?

16 A. Oh, yes. Now you're going to ask me who?

17 Q. Yes.

18 A. This will not be an exhaustive list, but  
19 I'm just going to give you something because,  
20 obviously, their campaign reports would reflect  
21 that.

22 Q. Uh-huh.

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1           A. Bobby Dyer, Tim Worst, Eric Wray. He ran  
2     in the race against Wooten. He's another African  
3     American, just to make that for the record. Dane  
4     Blythe, Jessica Abbott. That's a good  
5     representation. I can't recall the people I've  
6     written a check to.

7           Q. Has your campaign ever given money to  
8     another candidate's campaign?

9           A. My campaign? I do not recall writing a  
10    check during a campaign, but I'd have to go back  
11    and look to see if -- when I closed out my  
12    campaign account whether or not I wrote a check to  
13    another campaign just to close out my own account  
14    towards -- that's possible, but usually I write  
15    those checks to charity, but I won't say it didn't  
16    happen. That's possible, but I don't recall  
17    writing any -- I rarely had enough money for my  
18    own campaign to give it to someone else. I do not  
19    recall doing that.

20          Q. Have you ever volunteered for the campaign  
21    of a candidate running for City Council in  
22    Virginia Beach?

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1           A. Oh, yes. Since I was knee-high to a  
2 grasshopper, probably. I've been campaigning when  
3 I was 16, way back when, so yes.

4           Q. Okay. What about in 2018?

5           A. 2018. I'm actively on the Council for  
6 2018. I was busy doing my own race, so I didn't  
7 have much time to do stuff. But when I was  
8 passing out literature, I did include some  
9 literature for other people.

10          Q. Who else?

11          A. I'm trying to -- now I'm trying to think  
12 of who was running that I would have done that  
13 for. Probably Eric Wray. Eric Wray. I did do  
14 some campaigning for Eric Wray, although I was  
15 busy with my own campaign.

16          Q. Why did you support the campaign of Eric  
17 Wray?

18          A. Well, Eric Wray is a longtime personal  
19 friend, number one. He's always been helpful in  
20 my races. He's a small businessman. And his  
21 political views are very much aligned with my own.

22          Q. Any other reason?



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1 A. No.

2 Q. Did you support his campaign because you  
3 didn't prefer Sabrina Wooten?

4 A. Well, I would have supported -- no matter  
5 who the opposition was, I would have supported  
6 Eric Wray because he's a personal friend. But  
7 when you asked me that question about why I didn't  
8 support her, I wouldn't have -- if there had been  
9 no one else in the race, I would not have  
10 supported her because of who was backing her  
11 campaign.

12 Q. Anyone else you can remember handing out  
13 literature for in 2018 besides Eric Wray?

14 A. No, I cannot.

15 Q. Okay. What about 2016? Do you remember  
16 volunteering on anyone's campaign?

17 A. Well, I know I did stuff with Jessica, but  
18 I can't tell you -- you know, I did some  
19 door-to-door stuff for Jessica. Obviously, at  
20 different events, when I spoke places, if it  
21 was -- I was there being invited as -- like, a VBT  
22 breakfast or a Taxpayer Alliance meeting or

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1     someplace like that, I would have said I'm  
2     supporting Jessica. But that would be the extent  
3     of it.

4             Q. 2014?

5             A. I can't recall.

6             Q. 2012?

7             A. I know I -- you're going back that far.  
8     No. I just can't remember. I'm certain somebody  
9     would say he did this, but I'm not recalling it.

10            Q. In 2018, did you ever put up a yard sign  
11     for any other candidates running for City Council  
12     in Virginia Beach?

13            A. Yard sign? No.

14            Q. Sticker?

15            A. I can't see a sticker. But when you say a  
16     yard sign, can you be more explicit? I'm thinking  
17     a yard sign has specific meaning in a campaign.  
18     Do you mean any kind of sign posted on a property  
19     independent if it's a yard or not?

20            Q. Yes.

21            A. Okay. I didn't want to be evasive, but a  
22     yard sign has a specific meaning. Then there is

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1 the four-by-four signs that go up for candidates  
2 that goes on property. You want to include that  
3 in your --

4 Q. Yes.

5 A. Okay. Just making -- then I probably did.  
6 I can't tell you who gave us signs, but we went  
7 out in a truck and put signs up. I just can't  
8 recall which candidates they would be for, but  
9 they would be one of those candidates I endorsed.  
10 But we did go out and put four-by-four signs up.  
11 Some candidates didn't have them because they  
12 couldn't afford them. I can't tell you which ones  
13 they were, but, yes, I did go out and help and put  
14 posts in and put signs up; I just can't recall  
15 who.

16 MR. BOYNTON: You're killing her again, I  
17 think.

18 A. Sorry.

19 MR. BOYNTON: That's a lot of words per  
20 minute.

21 A. I'll slow down.

22 Q. Have you ever supported a candidate

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1 running for City Council in Virginia Beach in any  
2 other way, in -- let's just start with 2018?

3 A. In any other way? I'm trying to think of  
4 the ways you mentioned. You mentioned signs. You  
5 mentioned money. I mentioned I did Facetime  
6 videos. I mentioned I did some distribution of  
7 material. And --

8 Q. Endorsements?

9 A. Endorsements. I didn't do any TV ads. I  
10 didn't do any radio ads, that I can recall. So I  
11 would think -- I can't think of something else,  
12 but that doesn't mean there wasn't. But I'm not  
13 recalling something we haven't captured.

14 Q. Okay. Can you think of any candidates for  
15 City Council who supported your campaign in any  
16 way?

17 A. Well, Jessica Abbott has supported my  
18 campaign. Council members, correct?

19 Q. Uh-huh.

20 A. Bobby Dyer, Louis Jones. That's probably  
21 a thin list. I'm not the most popular person.

22 Q. What did Jessica Abbott do to support your

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1 campaign?

2 A. I recall Facebook stuff that she did. She  
3 helped critique campaign materials. I call that,  
4 you know, a help. And I think when she went out  
5 and about town, I'm sure she spoke on my behalf  
6 that she was supporting me. Those are things I  
7 know that she did.

8 Q. What about Mayor Dyer?

9 A. He publicly stated he was supporting me.  
10 And I do recall a small campaign contribution.  
11 But that would be the extent of his known support.

12 Q. What about Louis Jones?

13 A. He let me put signs on his property if I  
14 chose to. And I think he told people in the  
15 community that he was supporting me. But he  
16 didn't -- we didn't actively campaign together or  
17 anything of that nature. But that's what I can  
18 think of. He didn't make any public endorsement,  
19 if that's what you're asking.

20 Q. Can you think of anyone else in the  
21 Virginia Beach city government that supported your  
22 campaign for City Council?

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1           A. I probably would discourage that because I  
2     think they should remain apolitical. So I am not  
3     cognizant of anyone who was actively supporting my  
4     campaign, nor did I ever solicit it.

5           Q. Does Sheriff Stolle ever support anyone's  
6     campaign?

7           A. Elected constitutional officers is not  
8     city government, number one. He certainly didn't  
9     support my campaign last time. I don't know that  
10    he's ever actively endorsed me, that I'm cognizant  
11    of. That doesn't mean that he hasn't supported me  
12    unbeknownst to me, but I've never gotten a check  
13    or anything where I've seen his name on it saying,  
14    hey, I'm for John Moss.

15           And City Commissioner of Revenue, no. I  
16    can't recall any -- maybe John Atkinson because he  
17    was City Treasurer. But I don't think in 2018 he  
18    gave me money, but I don't recall if he gave me  
19    absolutely a public endorsement, but he may have.  
20    But for the most part, not any of the  
21    constitutional officers which aren't city  
22    employees, but I don't recall, you know, getting

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1 their active endorsement. As a matter of fact,  
2 quite to the contrary in 2014.

3 Q. Why do you say that?

4 A. Because they endorsed the person I ran  
5 against or was running for the empty seat.

6 Q. Who was the person you ran against?

7 A. Dennis Free.

8 Q. Have you ever held any other position with  
9 a city government, whether Virginia Beach or  
10 elsewhere?

11 A. When I was living in Germantown, Tennessee  
12 I was appointed to the Education Commission, but  
13 that Commission didn't have any direct oversight  
14 over the Shelby County Schools because Germantown  
15 was a city where the county provided schools. It  
16 was just a liaison to the school system there. I  
17 did serve in that capacity. That was 1995 to  
18 19 -- sometime in 1998 when I left for Harvard, so  
19 for about a three-year period of time.

20 Q. So very briefly, and slowly for the court  
21 reporter's benefit, what are your current policy  
22 priorities as a City Council member?

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1 A. No tax and fee increases is number one.

2 Q. What else?

3 A. Two is flooding, meaning flood  
4 mitigations, and specifically a bond referendum in  
5 2020.

6 Q. What else?

7 A. And to successfully complete our post-May  
8 31st shooting facility realignment we have to take  
9 place. We're redoing about \$50 million worth of  
10 buildings to get everybody back to the main  
11 campus. And that is a priority for me.

12 Q. Would you say changing the city's  
13 electoral system to single-member districts is a  
14 priority?

15 A. It would be a priority for me, but here is  
16 the context. I support having -- and I have said  
17 this and continue to say it -- us having a bond --  
18 having a referendum in 2020 and letting the public  
19 vote. I have also said I am not opposed to giving  
20 them a choice of the hybrid system and a 10  
21 district system.

22 It's not for me to decide as a Council



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1 member. This government belongs to the people,  
2 and they shouldn't be denied the right to vote.  
3 And when they vote, then we should go to the  
4 General Assembly. And unlike in the past, the  
5 General Assembly has to modify our Charter. And  
6 whatever the public decides is what they should  
7 do. This is not my decision to make. I owe it to  
8 the public so they have a right to decide for  
9 themselves. It's their government, not mine.

10 Q. If it were your choice, would you select a  
11 single-member district system of election?

12 A. I personally support -- and I said this --  
13 you have asked me, so I would -- if the public  
14 wants 10, I support the hybrid system that came  
15 back -- because I think it represents a balance of  
16 competing interests in the community. And that's  
17 a balance against parochialism you can get from a  
18 district system. They have their pluses and  
19 minuses. I think it's the best point of  
20 indifference, the need of reflection on the point  
21 of the curve, of the political curve so to speak.  
22 And that's what I would support. But I would

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1 respect whatever the public chooses, including  
2 retaining the current system should that be their  
3 choice.

4 Q. So just to be clear for the record, when  
5 you say the hybrid system you're referring to  
6 seven single-member districts and four at-large?

7 A. Correct.

8 Q. Do you know how Sabrina Wooten came to run  
9 for City Council?

10 A. I do not.

11 Q. Had you ever heard of Sabrina Wooten  
12 before she ran for City Council?

13 A. I had not. She had served on some boards  
14 and commissions, but I didn't know her.

15 Q. Do you know anything about how her  
16 candidacy for City Council came about?

17 A. What do you mean? Can you be more  
18 specific? I assume she got 125 signatures and she  
19 filed and did that. I'm sure you're not asking  
20 that.

21 Q. No.

22 Do you know anything about who supported

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1 her candidacy as a City Council member?

2 A. I do know her initial campaign manager was  
3 Brian Kerwin. And somewhere in the course of that  
4 campaign he was dismissed.

5 Q. Who is -- can you spell that name?

6 A. Brian, B-R-I-A-N, Kerwin, K-E-R-W-I-N.  
7 Kerwin.

8 Q. Who is he?

9 A. He's a political consultant. And I don't,  
10 you know -- he's a local figure that's around  
11 quite a bit, but he does run campaigns. That's a  
12 profession that he does. I know that only because  
13 it became common knowledge, not because he called  
14 me up and said, hey, John, I just got let go or  
15 anything like that.

16 Q. Has he helped run any other City Council  
17 members' campaigns?

18 A. Oh, yeah. He's been involved in a number  
19 of campaigns. Now you're going to ask me which  
20 ones. I can't recall. But he's been involved in  
21 a number of Council members' campaigns and people  
22 wanting to be on City Council's campaigns.

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1 Q. Can you remember any specific examples?

2 A. I think he's currently supporting Rosemary  
3 Wilson's reelection campaign. I think he worked  
4 Shannon Kane's campaign when she was on City  
5 Council. But, really, that would be about --  
6 that's all -- not known for a fact but my best  
7 understanding.

8 Q. Do you know how Sabrina Wooten hired --  
9 came to hire Brian Kerwin?

10 A. No. I don't really know anything about  
11 the workings of her campaign.

12 Q. Okay. And you mentioned earlier that you  
13 did not support her campaign?

14 A. That is correct.

15 Q. Is the only reason why you didn't support  
16 her campaign because she got money from Bruce  
17 Thompson?

18 A. Well, as I mentioned earlier, to repeat,  
19 no matter who was in that race, I was going to be  
20 supporting a personal friend, Eric Wray. But if  
21 he had not been in that race, I would not have  
22 supported her based on the people who are backing

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1       them. Principally, Bruce Thompson was an  
2       immediate disqualifier for me to support anyone  
3       who's being supported by Bruce Thompson. It's a  
4       litmus test.

5           Q. Are you aware of any other City Council  
6       candidates or members that supported the campaign  
7       of Sabrina Wooten for a City Council seat?

8           A. Tell you the truth, I didn't keep track of  
9       any of that. No.

10          Q. Are you aware whether the Mayor supported  
11       the campaign of Sabrina Wooten?

12          A. I know that she was a student of his at  
13       one time, but I don't know that he actively --  
14       since he was running for Mayor, I think he was  
15       trying to -- trying to make sure he wasn't taking  
16       sides. But you can ask him. I don't recall him  
17       or seeing a statement where he had actively  
18       endorsed her campaign. I don't recall that.

19          Q. Do you know how Aaron Rouse came to run  
20       for City Council?

21          A. I do not know how he came to run for City  
22       Council. I did meet with him after he decided to

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1 run for City Council.

2 Q. I'm sorry? You did meet with him?

3 A. Yes, after he was declared he was going to  
4 be -- he was a candidate, I did meet with him.  
5 Correct.

6 Q. What was that meeting about?

7 A. I think he was trying to pick my brain, in  
8 part, which I was more than willing to do, just  
9 about races, campaigns in general. He was asking  
10 me, you know, what my priorities were. I was  
11 asking what his priorities were. And, you know,  
12 he's announced he was just looking to have a level  
13 playing field. He also thought that there were  
14 voices in the community that weren't being heard  
15 on the City Council.

16 You know, he referenced the fact that all  
17 the time he lived in Seatack or different  
18 communities he never saw any Council members in  
19 his neighborhood, and he wanted to be on a Council  
20 to go out and reach the people who -- I don't want  
21 to say disenfranchised, but who rarely see the  
22 faces of political leaders in their neighborhood,

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1 and he wanted to give them a voice, and that he  
2 was a capitalist, which I love. And I think he  
3 brought a fresh view and, I thought, a youthful  
4 face on City Council with a necessary voice on top  
5 of Jessica's.

6 And I think also being a member of the  
7 African American community, I thought that was  
8 another way to increase diversity. And that's why  
9 I ran with John Perry back in 1986. I supported  
10 Eric Wray, who's an African American candidate.  
11 I've always thought the Council is always better  
12 with diversity. And I've always looked out and  
13 looked for competent people that have the right  
14 sense of virtue to seek public office.

15 And I didn't make any commitment at that  
16 meeting, but later on I did. But it was the first  
17 meeting we met with his campaign manager -- I  
18 can't remember his name -- at a restaurant on  
19 Lynnhaven Boulevard -- Parkway -- Lynnhaven Road.  
20 I can't recall the name of that either. That's  
21 the first time we met. We met other times, too,  
22 during the course of the campaign, just general

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1 conversation. And we did a joint thing at Mike  
2 Standing's parents' home over in Bay Colony.

3 Q. Had you ever heard of Aaron Rouse before  
4 he ran for City Council?

5 A. Only as a Tech football player. I'm a  
6 fellow Hokie.

7 Q. And we've already discussed that you've  
8 supported Aaron Rouse's campaign?

9 A. Correct.

10 Q. Are there any other ways that you  
11 supported his campaign, that you can think of,  
12 that we haven't already talked about?

13 A. No. I didn't -- I didn't write him -- I  
14 don't think I wrote him any check, any money. I  
15 didn't do that.

16 Q. Are you aware whether the Mayor supported  
17 the campaign of Aaron Rouse in any way?

18 A. It would seem logical he would have, but I  
19 can't consciously say that I know he did.

20 Q. Are you aware of any other City Council  
21 candidates or members that supported the campaign  
22 of Aaron Rouse?



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1           A. Jessica probably did. I'm pretty certain  
2 Jessica did. But after that, I wouldn't venture.  
3 I don't recall. I know Jessica did. I just can't  
4 recall anybody else.

5           Q. Have any Latino candidates ever been  
6 elected to the City Council?

7           A. No.

8           Q. Besides Ron Villanueva, have any Asian  
9 candidates ever been elected to the City Council?

10          A. Not to my knowledge.

11          Q. How long have you lived in Virginia Beach?

12          A. 19 -- maybe even -- '59 or '60. I came  
13 here as a young kid with my dad in the Navy, so it  
14 might have been late '59 or early '60s, in that  
15 time. Princess Anne County then, when I lived  
16 here.

17               Of course, I didn't live here from March  
18 15th, 1995 until I moved back in, I think it was,  
19 sometime in 2001, I believe it was, 2001.

20          Q. Would you agree that between 1959 or 1960  
21 when you first moved here and today the minority  
22 population in Virginia Beach has grown?

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1 A. Demographically, that's a true statement.

2 Q. How would you describe the size of the  
3 minority population in Virginia Beach?

4 A. If my memory serves me, the African  
5 American community is around 20 percent. I think  
6 that's about right. I know we have one of the  
7 larger -- second largest Filipino American  
8 populations in the United States, a large part due  
9 to the Navy. I don't know how big that is. Maybe  
10 5 percent. I don't know. I don't know the  
11 percentages for that, but I think it's probably in  
12 that realm.

13 And, then, probably, after that is --  
14 probably, I guess you would call it -- you used  
15 the word Latino, I think, probably comes next. I  
16 think the Filipino community might be larger than  
17 the Asian Pacific Islander community. I know they  
18 all fit in that category. But the Filipino  
19 community here is quite large. They're probably  
20 27 -- maybe 27 percent of the population as a  
21 whole. That's a guess.

22 Q. Would you agree that minorities tend to

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1 live close to each other in Virginia Beach?

2 A. No. I would not say that. There's been  
3 several studies, and I can't recount what they  
4 were, but I would say that Virginia Beach, if it  
5 has any kind of segregation it's economic versus  
6 ethnicity or racial. Our neighborhoods are fairly  
7 integrated.

8 In fact, the city got recognized as having  
9 some of the most integrated neighborhoods in the  
10 United States. So I think we have -- in large  
11 part due to the large segment of our population  
12 that is either state, local, or federal government  
13 employed, and therefore has a better than average  
14 income, causes our neighborhoods to be much more  
15 integrated than what you might otherwise see. So,  
16 no, I would not share that conclusion.

17 Q. Which neighborhoods in the city would you  
18 classify as predominantly black neighborhoods?

19 A. If you go back to the traditional Doyle  
20 Town, Reid Town, those were the communities --  
21 when we were doing the Community Block Program  
22 back in the '70s, those were neighborhoods that

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1 called -- Seatack -- that were called traditional  
2 African American communities, which were free  
3 landholders going back some period of time.

4 Over time they, too, have become  
5 integrated because of the attractiveness of the  
6 location of the land holdings. Not saying that  
7 still they might not be predominantly minorities,  
8 but not as much as they were back in the early  
9 days of the county only because people sold out or  
10 people moved in. They're attractive places to  
11 live.

12 But Seatack probably is the biggest single  
13 concentration of traditionally -- in terms of  
14 neighborhoods or communities -- it's still  
15 predominantly African American -- that hasn't had  
16 substantial redevelopment to other races, for  
17 instance.

18 So I don't know that I would say that  
19 there are dominant places that are -- where there  
20 is a majority. I think there is places where  
21 maybe no one is a majority. But I don't know --  
22 other than mentioning those areas, nothing comes

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1 to mind as this is a -- oh. Take it back. L&J  
2 Gardens is a neighborhood.

3 Q. How do you spell that?

4 A. L&J Gardens. It's a subdivision that's --

5 Q. How do you spell it?

6 A. L&J, with an and, Gardens. It's between  
7 Wesleyan Drive and Baker Road, Northampton.

8 That's the three roads that bound that  
9 neighborhood. That neighborhood goes back, way  
10 back. That was a traditional neighborhood of  
11 professional black businessmen and other kind of  
12 professionals, women as well. And John Perry  
13 lived in that neighborhood. That since, too,  
14 has -- people have moved in there. So that's not  
15 now absolutely -- but that was a place back in the  
16 day, right on the border of Norfolk, where it was  
17 predominantly a single-family home, very nice  
18 neighborhood of black professionals. That's a  
19 small neighborhood. I wouldn't characterize that  
20 as a community. It's a neighborhood. But I want  
21 to be as accurate as I can.

22 Q. Can you think of any neighborhoods in the

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1 city that you would classify as predominantly  
2 Latino?

3 A. No.

4 Q. Can you think of any neighborhoods in the  
5 city you would classify as predominantly Asian?

6 A. No, for the reasons I specified earlier.

7 Q. Following the 2010 census, the City of  
8 Virginia Beach redistricted the city's seven  
9 residency districts, correct?

10 A. Correct.

11 Q. You were not on the City Council at that  
12 time?

13 A. Correct.

14 Q. Were you involved in any way in the  
15 redistricting that took place in Virginia Beach  
16 following the 2010 census?

17 A. No.

18 Q. Were you involved in the hiring of any  
19 consultants to help with redistricting?

20 A. No.

21 Q. Even though you were not on the City  
22 Council, did you have any conversations with

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1 anyone regarding the redistricting that was going  
2 on?

3 A. Not that I can recall. The people that  
4 chaired that, however, was -- Glenn Davis on the  
5 City Council and Louis Jones were the two Council  
6 liaisons who headed up that effort. But I was not  
7 in communication with them nor anyone else.

8 Q. Do you know who Kimball Brace is?

9 A. Obviously not. No.

10 Q. You never had any conversations with  
11 Kimball Brace?

12 A. I don't recognize the name. Maybe if I  
13 saw a face it might help, but I don't recognize  
14 that name.

15 Q. Do you vote in City Council elections?

16 A. I do.

17 Q. In which residency district in Virginia  
18 Beach do you currently live?

19 A. I live in the Bayside district.

20 Q. What City Council member currently  
21 represents that district?

22 A. Louis Jones.

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1 Q. Have you ever lived in any other residency  
2 district in Virginia Beach?

3 A. Yes.

4 Q. Which ones?

5 A. I lived in the Kempsville borough district  
6 when I was elected to the Kempsville borough seat,  
7 which no longer exists.

8 Q. Was that 1986?

9 A. Yes. And I lived in the Bayside district  
10 as a young adult when I was still living at home  
11 going to school.

12 Q. Uh-huh.

13 A. That's the three places I've lived.

14 Q. I think you said Bayside twice, correct?

15 A. Right.

16 Q. Bayside and Kempsville?

17 A. I moved and lived in Thalia, which at that  
18 time was the Kempsville borough. It's now the  
19 Lynnhaven borough -- Lynnhaven district. We got  
20 away from boroughs. But it was Kempsville at the  
21 time I lived there. So I've lived in Bayside,  
22 Kempsville, Bayside.



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1 Q. Yep.

2 You have been a vocal supporter to a  
3 change to single-member districts in the city for  
4 some time, correct?

5 A. Yes. Going back to the '80s.

6 Q. So when was the first time you can  
7 remember supporting a change to a single-member  
8 district method of election?

9 A. Right after -- probably in the '89-'90  
10 timeframe because, first of all, we had to get the  
11 direct election of the Mayor. That was the first  
12 thing we worked on. Then we went from appointed  
13 School Boards to elected School Boards. And I was  
14 an advocate and, I'd call, maybe even the  
15 principal architect of making that happen, but  
16 getting all these positions elected, and then  
17 getting the Mayor as a directly elected versus  
18 appointed. And then, of course, there was the  
19 Commission. But we were pushing for that before  
20 then even.

21 Q. So when you say that the first time you  
22 supported a change to a single-member district was

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1 1989 and 1990, what particular thing did you do at  
2 that time?

3 A. Talk. You know, it might sound strange,  
4 but having a community conversation, trying to  
5 build support, make the case. And, of course, in  
6 the 1990 election when Balko didn't win, as I  
7 talked about earlier, that -- and the people in  
8 that community were extremely disappointed that  
9 the person they wanted they didn't get, well, then  
10 the Mayor, then Mayor Meyera Oberndorf -- she's  
11 deceased -- took it on her own, based on that, to  
12 do a Mayor's Commission, which I mentioned  
13 earlier, which then led to that first referendum.  
14 And I wish I could remember the year of that, but  
15 it's escaping me.

16 Q. What kinds of things did you do to talk in  
17 support of single-member districts? Did you hold  
18 town halls? Did you talk about it at City Council  
19 meetings?

20 A. I don't recall going -- holding town  
21 halls, but anyplace I could get a platform.  
22 That's a long time ago. It seems like now

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1 forever. But no, I can't recall any specific  
2 things that I did.

3 Q. What else have you done to advocate for a  
4 change to a single-member district system?

5 A. I can't recall. And the City Clerk could  
6 get it, but we did put -- I don't know what  
7 legislative packet. We did put in a proposal to  
8 have -- you know, to have the Charter changed at  
9 referendum. I didn't get the votes of my peers.  
10 You'd have to go to the City Clerk to know when  
11 that was. It's been since I've been on City  
12 Council this time, since 2011. I've introduced it  
13 maybe twice. And, of course, you know, at some  
14 point when you get no traction, you know, you  
15 realize that -- you know, you don't want to be Don  
16 Quixote, so you realize that the critical mass is  
17 not there. But hopefully, if all the people who  
18 campaigned on it stick to their word, maybe we'll  
19 be able to put something on the ballot this  
20 November.

21 Q. Who campaigned on it?

22 A. Aaron Rouse did. He said he would support

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1 it. So did Ms. Wooten. She said she would  
2 support it.

3 Q. Jessica Abbott?

4 A. Yep. Well, she has said she would.

5 Bobby Dyer has indicated he could consider  
6 it. I'll put him on the maybe column. Of course,  
7 there is myself. And I think that's pretty close.  
8 I think that -- I think we can get something  
9 there. We've just got to work that coalition.  
10 But it's not because we're trying to cure an ill.  
11 We're trying to make it -- take money out of the  
12 equation so the races -- it's more open to every  
13 day citizens to run. It's all about reducing the  
14 influence of money to run an effective campaign.

15 And people want to have their own -- they  
16 have their own General Assembly district. They  
17 have their own Congressman. They want their own  
18 Council member that they can hold accountable.  
19 And they feel the at-large system precludes them  
20 from holding their district Council member  
21 accountable. You hear that a lot from voters who  
22 come to town halls and whatnot.

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1 Q. Do a lot of voters tell you that they want  
2 to change to single-member districts?

3 A. A lot -- I will say the people who show up  
4 at town halls or these community meetings, yes,  
5 but that's still anecdotal. I can't make the leap  
6 and say it's a large number because that's a  
7 statistical judgment. I can just say --  
8 anecdotally, I would say that the people -- the  
9 majority of events I go to, that people think at  
10 least they should have a chance to choose. Even  
11 if they don't want to change it, they do agree  
12 that people have a right the vote to choose if  
13 they want to change it.

14 Q. So of the members of the current City  
15 Council, you told me that Aaron Rouse, Sabrina  
16 Wooten, Jessica Abbott, and yourself support a  
17 change to single-member districts, and, then,  
18 perhaps Mayor Bob Dyer does. So if we count that  
19 up, that's five --

20 A. A little short.

21 Q. -- of 11?

22 A. A little short.

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1 Q. So would you say that the majority of the  
2 current City Council favors retaining the at-large  
3 system?

4 A. No.

5 Q. Why?

6 A. I would just say the majority -- some are  
7 in favor, that's clear. There are some who do not  
8 want to change. They made that clear. And I  
9 respect that.

10 Q. Who?

11 A. Barbara Henley is one. She's probably the  
12 biggest advocate of retaining the current system.

13 Q. What about Rosemary Wilson?

14 A. I think she is, as well. The others, I  
15 think -- sometimes we say good politicians -- have  
16 not made a public position except they didn't  
17 support my legislative packet change.

18 MR. BOYNTON: And I do want to be clear  
19 that you're testifying as to public positions and  
20 not as to legislative secret conversations?

21 A. Correct. This is just all derived from my  
22 public assessment of -- there is no executive

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1 session or anything. This is all my personal  
2 opinion.

3 Thank you.

4 Q. So between 1989 and today, besides talking  
5 in support of a change to single-member districts  
6 and putting forward proposals on the agenda to  
7 change to single-member districts, can you think  
8 of anything else you've done to support --

9 A. I've spoken with selective members of the  
10 legislature in the General Assembly that, you  
11 know -- that I'm in support of it. Not  
12 surprisingly -- and I would say the same thing.  
13 They said, well, if that's what the Council  
14 majority or the public says they want, then, you  
15 know, we'll support it. I wasn't asking them to  
16 do otherwise. I was just letting them know what  
17 my position was. And I would say they are  
18 apolitical on the question, rightfully so.

19 Q. Uh-huh.

20 A. It's up to the people to decide. If  
21 you're asking me have I spoken with people, I have  
22 just to let them know I'm out there working the

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1 system, so to speak, to get -- you know, to get  
2 this on a referendum as something that I think  
3 deserves to be out there for the public to choose.

4 Q. Who in the General Assembly?

5 A. I've spoken with Delegate Knight.

6 Q. Can you spell that?

7 A. K-N-I-G-H-T, like in the Knights of the  
8 Roundtable.

9 Q. Uh-huh.

10 A. And Senator Bill DeSteph. That's D-E,  
11 then a capital S, T-E-P-H. And I'm trying to  
12 think of who else I might have spoken with.

13 Delegate Fowler, one conversation. But  
14 principally it's been -- and Jason Miyares. He's  
15 a Delegate.

16 Q. Can you spell that?

17 A. Help me here.

18 MR. BOYNTON: M-I-Y-A-R-E-S.

19 A. Thank you very much.

20 Q. Thank you.

21 Do you say the same general things?

22 A. Yeah. I'm just giving them heads up, hey,



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1 I'm working this. And I expect for them to say,  
2 hey, well, if you can build a majority on Council,  
3 if the public says this is what they want they  
4 will support it, but, rightfully so, they're not  
5 going to inject or impose their will on the  
6 public. I just want to let them know it's  
7 something that we're working. Just a friendly  
8 conversation.

9 Q. So you'd agree that you've been advocating  
10 for a change to single-member districts since  
11 about 1989?

12 A. Yes.

13 Q. Yet, the city still utilizes an at-large  
14 method of election for City Council, correct?

15 A. Correct.

16 Q. Would you agree that minority groups in  
17 Virginia Beach have expressed support for a change  
18 to a single-member district system?

19 A. I can say that minorities have. But to  
20 say that minorities as a collective have, I can't  
21 say that I have proof of that. When someone comes  
22 up, I'm speaking for the somebody's community, and

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1 they're just saying that, well, what proof do they  
2 have? You know, they don't provide you any  
3 statistical polling. They don't have some  
4 resolution from some group adopted.

5 So I do believe there are minorities that  
6 have come and told us that the system would work,  
7 but I don't know what the minority community  
8 that's defined demographically thinks.

9 Q. When you say that there are minorities  
10 that have come and told you they support a change  
11 to a single-member district system, what do you  
12 mean?

13 A. Well, they came before City Council.  
14 There is -- Andrew Jackson has come and spoken to  
15 the City Council directly. The gentleman who --  
16 gosh. He just left Cox Cable not too long ago.  
17 He ran for the state Senate against Wagner. I can  
18 see his face. A tall, thin gentleman. I can't  
19 think of his name. I'm terrible about names; good  
20 about faces. He came and spoke. Some people came  
21 out and spoke and said exactly what they wanted.  
22 And specifically, they said they wanted the 10

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1 district system. And they spoke at City Council  
2 and expressed that.

3 I haven't heard anyone come forward from  
4 the Filipino community and say that. I haven't  
5 heard anyone who declared that they were the  
6 Latino community and say that. And I haven't  
7 heard someone say I'm the Asian Pacific Islander  
8 community and that's what I said. So I don't know  
9 what the community that would be considered  
10 demographic minority speaking as a group thinks.  
11 But I do know people have come up to us and say --  
12 from their people and saying I represent this  
13 group, the NAACP, or the African American  
14 Coalition Group. But I don't know that they  
15 necessarily represent the body demographically  
16 that would be considered a minority group.  
17 That's -- I'm not trying to parse words. I just  
18 can't say what the minorities think because we  
19 have very integrated neighborhoods.

20 Q. I'm not asking you to --

21 MR. BOYNTON: I think she's got it on that  
22 one. Next question.

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1 Q. Were you around for the 2001  
2 redistricting?

3 A. Was I here? Yes. 1995 -- no. I was not.  
4 I had to go back and pop in the dates. No.

5 Q. Is improving the diversity among the City  
6 Council members in Virginia Beach a reason why  
7 you'd support a change to a single-member district  
8 system?

9 A. That was not the reason.

10 Q. Is it a reason?

11 A. It is an outcome possibly, but that was  
12 not my reason.

13 Q. Is it a possible outcome that you would  
14 support?

15 A. I support always the choice of the voters.  
16 It's the voters' choice, not mine.

17 Q. Is providing minority voters an  
18 opportunity to elect candidates of their choice a  
19 reason why you support a change to a single-member  
20 district system?

21 A. I support increasing the competition of  
22 any group, majority or minority, to effectively be

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1 able to run for Council.

2 Q. Besides what we've already discussed  
3 today, any other reasons why you support a change  
4 to a single-member district system?

5 A. No. I think I've expressed that pretty  
6 clearly.

7 Q. Besides what we've already talked about  
8 today, do you think the current at-large method of  
9 election is unfair in any way?

10 A. Personally, yes. I think it  
11 disenfranchises the people's ability to run for  
12 office and be a competitive candidate, and it  
13 denies the public a better spectrum of choices of  
14 whom they can elect.

15 Q. Why?

16 A. Because I had mentioned earlier, to run  
17 at-large across the whole city requires tremendous  
18 financial resources, for the most part, to be  
19 effective, and, therefore, it -- the need for  
20 money reduces the competitive -- reduces  
21 competition and reduces choice to the voters.

22 Q. Does the city's at-large election system

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1 reduce voter turnout?

2 A. There is no evidence of that, that I'm  
3 aware of.

4 Q. Does the city's at-large election system  
5 reduce voter turnout among minority voters?

6 A. I am not in possession of any information  
7 that would suggest that.

8 MS. HARLESS: Let's mark Exhibit 2.

9 (Exhibit 2 was marked and  
10 attached to the transcript.)

11 Q. Mr. Moss, the court reporter has just  
12 handed you what was marked as Exhibit 2. Have you  
13 seen this document before?

14 A. I'm sure I've read this newspaper article  
15 before. I don't recall specifically, you know,  
16 when I read it, but I'm a pretty good reader of  
17 the newspaper.

18 Q. And this article is dated October 2nd,  
19 2018, correct?

20 A. October 2nd, 2018. That is correct.

21 Q. And the title of the article is 2 Virginia  
22 Beach Council members want to change the city's

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1 election system, correct?

2 A. Right.

3 Q. You were one of the two Council members  
4 who wanted to change the city's election system,  
5 correct?

6 A. Correct.

7 Q. I'd like you to turn to page 4 of this  
8 article. The paragraph at the very top of the  
9 page says, "Six years ago Moss and state Senator  
10 Bill DeSteph, a former Councilman, made a similar  
11 effort to end at-large voting districts but  
12 couldn't persuade most Council members to get on  
13 board."

14 A. Yep. I told you I put something forth a  
15 couple of times.

16 Q. What, specifically, is this referring to  
17 that you and Senator Bill DeSteph made an effort?

18 A. Bill DeSteph had been on City Council at  
19 one time. You may not know -- I believe we -- as  
20 a matter of fact, remember the times I told you in  
21 our legislative package we made a proposal to make  
22 a change? I think this is one of those events. I

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1       couldn't remember all of them. But we did, and we  
2       weren't successful. He was a former Council  
3       member.

4             Q. Uh-huh.

5             A. That's when we did that. We were not  
6       successful in doing so. That is correct.

7             Q. And you don't remember what year that was?

8             A. No. That would have been after 2011 when  
9       I got back on City Council. But I can't tell you  
10      if it was 2012 -- it would have to be '12 or later  
11      because I took office in November of 2011 in a  
12      special election. And our legislative package  
13      would have been completed. So unless I tried to  
14      push something before Christmas, which we could  
15      have, it was 2012.

16            MR. BOYNTON: Again, a lot of words. I  
17      think you think out loud. And she's having to  
18      transcribe all of it, so --

19            Q. Just slow down. It's okay. Just slow it  
20      down.

21            If we go two paragraphs below that one on  
22      this Exhibit 2, there is a quote from you. Do you



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1 see that?

2 A. I do.

3 Q. Could you read that into the record,  
4 please?

5 A. "It creates a scale that enables  
6 grassroots campaigning and fosters competition, he  
7 said. The city's geography of 250-plus square  
8 miles disproportionately empowers monied special  
9 interests' influence on the voters' choices and  
10 election outcomes."

11 Q. When it says "It creates a scale that  
12 enables grassroots campaigning and fosters  
13 competition", you're referring to single-member  
14 districts?

15 A. Correct.

16 Q. You'd still agree with this statement,  
17 correct?

18 A. Absolutely. And I believe I have restated  
19 this in my deposition.

20 Q. Uh-huh.

21 Would you agree that the city's current  
22 at-large system makes it difficult for minority

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1 voters to elect candidates they prefer to the City  
2 Council?

3 A. I think it makes it difficult for any  
4 voters to get a better choice. I don't know that  
5 I would concur with the statement that you made.

6 Q. All right. You can put that one to the  
7 side.

8 MR. BOYNTON: She gets the sticker ones  
9 back.

10 A. This is not a sticker one.

11 MR. BOYNTON: It is at the bottom.

12 MS. HARLESS: We're going to mark this as  
13 Exhibit 3. And it's very big. So there are tabs  
14 on the pages you'll need to turn to.

15 (Exhibit 3 was marked and  
16 attached to the transcript.)

17 MR. BOYNTON: Going to the first tab?

18 Q. I have just handed you what's been marked  
19 as Exhibit 3 by the court reporter. I'm going to  
20 represent to you this is a subpoena that was sent  
21 to Council Member Jessica Abbott by the plaintiffs  
22 in this case, similar to the one that was sent to

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1 you. And the documents attached here were  
2 produced by Council Member Abbott in response to  
3 that subpoena. Does that make sense?

4 A. That's what it says, yes.

5 Q. So I'd like you to turn to the first tab,  
6 tabbed page, in this document, which is page 26 of  
7 the document.

8 MR. BOYNTON: The pages aren't numbered.  
9 So let the record reflect we are referring to a  
10 September 28, 2018 letter from David L. Hansen to  
11 Honorable Louis R. Jones, Mayor, and members of  
12 Council.

13 MS. HARLESS: And we were just going to  
14 get into that.

15 MR. BOYNTON: Sorry.

16 MS. HARLESS: Unfortunately, when Council  
17 Member Abbott produced this there were no page  
18 numbers, so I tried to tab it to be helpful.

19 MR. BOYNTON: I was just trying to keep it  
20 straight.

21 Q. Have you seen this document before?

22 A. Yes. I would have seen this at the time,

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1 correct.

2 Q. And you'd agree that it is just what your  
3 counsel stated on the record?

4 A. Yes.

5 Q. Generally, what is a General Assembly  
6 session legislative agenda?

7 A. Annually the Council, through a public  
8 participation process, puts forth a set of  
9 proposals that we would like the General Assembly  
10 to consider and pass that would benefit the City  
11 of Virginia Beach and its residents. And it's  
12 adopted subsequent to a public hearing and by a  
13 majority vote. But prior to that, obviously,  
14 individual Council members can put things in here,  
15 but that's because it's proposed. They don't  
16 necessarily make the final vote. They're not  
17 included in the actual package that goes to the  
18 General Assembly.

19 Q. So I'd like you to look at the first  
20 sentence of the letter from Mr. Hansen. And in  
21 that he -- Mr. Hansen wrote that this was a draft  
22 of the 2019 General Assembly Session Legislative

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1 Agenda, correct?

2 A. Correct. That would be the process.

3 Q. Do you remember if the Council actually  
4 voted on the Legislative Agenda on October 2nd,  
5 2018?

6 A. We did have a vote on that day. I assume  
7 that's the day we voted. I can't remember if we  
8 deferred it or not. It would be in the month of  
9 October that we normally would adopt it. I cannot  
10 recall -- sometimes we do deferrals. And it might  
11 have been adopted later. But I do recall that we  
12 did adopt a legislative package in October. I  
13 don't know that we actually did it on the 2nd.

14 Q. Okay. And I'd like you to look at the  
15 second proposed agenda item. And this is an  
16 agenda item proposed by you and Council Member  
17 Abbott to have an amendment to the City Charter to  
18 change the seven residency districts to seven  
19 single-member districts, correct?

20 A. Correct.

21 Q. Was the amendment to change to seven  
22 single-member districts added to the 2019 General

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1 Assembly Session Legislative Agenda that was  
2 ultimately passed by the City Council?

3 A. It was not adopted by a majority of the  
4 City Council.

5 Q. Why not?

6 A. Well, I can't speak for whether people who  
7 voted no or not to include it, but they judged it  
8 to be not in the best interest of the city is all  
9 I can judge -- convey. But I don't know their  
10 specific reasons.

11 Q. Since asking to place this item on the  
12 2019 General Assembly Legislative Agenda, have you  
13 done anything else to follow up on this request?

14 A. We've -- if I remember right, we did talk  
15 about it at the February retreat. It was a topic  
16 of discussion. But no direction was provided or  
17 guidance, but it was a topic of discussion. But I  
18 can't say that I've done anything -- we did not  
19 put forth a proposal in the legislative package  
20 this year to do this because no one sponsored  
21 something to go forward, and so it's not a part of  
22 this year's package thus far.

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1 Q. When you say you talked about the  
2 single-member district issue at the February  
3 retreat, what do you mean?

4 A. Talking about the need to change the  
5 manner in which Council should be elected. It's  
6 come up in a couple of formal sessions. I can't  
7 tell you which ones because I don't remember.  
8 There have always been people representing their  
9 views.

10 We talked about having a referendum in  
11 2020 and -- at one of those meetings. And some  
12 people expressed, well, if they're going to do  
13 that we have to have this, you know, huge  
14 education campaign so people know what they're  
15 going to do. But that's the extent of it. Once  
16 again, no direction, no consensus; just dialogue.

17 Q. Can you remember anything else that was  
18 said about it?

19 A. No.

20 MR. BOYNTON: Public sessions you're  
21 referring to?

22 A. Yeah. These are all public sessions.

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1 Workshop sessions are informal sessions, nothing  
2 closed. These are just -- if you went back and  
3 looked at the proceedings on video, you can see --

4 MR. BOYNTON: The reason I'm asking for a  
5 clarification is because to the extent they were  
6 private conversations that would implicate  
7 legislative privilege.

8 A. Okay.

9 Q. So --

10 A. These are public, in a big public setting  
11 where the public could be present.

12 Q. That's --

13 MR. BOYNTON: I'm not trying to --

14 MS. HARLESS: No. No.

15 Q. Is the retreat considered public?

16 A. It is public. The citizens come to it.  
17 It's not televised. And it wasn't recorded.  
18 There is not transcripts maintained of it. But  
19 the public can attend.

20 Q. Is there anything else you remember from  
21 the retreat?

22 A. No.



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1 Q. Okay.

2 A. I'm just trying to be as complete as I  
3 can.

4 Q. Was there a public hearing about the  
5 proposed items for the 2019 Legislative Session  
6 Agenda?

7 A. Yes. There is a public hearing.

8 Q. Were you at that public hearing?

9 A. I was.

10 Q. Do you remember if it was only in October  
11 2018?

12 A. It was. I just can't recall -- we would  
13 have held a hearing independent of whether or not  
14 we voted. I just can't recall if we deferred it  
15 or did something. That's why I say I don't know  
16 that we voted on the 2nd. But if that was the  
17 date for the public hearing, we would have had the  
18 public hearing on the adoption date, I think. The  
19 City Clerk can confirm that.

20 Q. Okay. Are there usually transcripts of  
21 public hearings?

22 A. You have to ask the City Clerk. I know

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1 they keep minutes, but I think -- unless it's  
2 transcripts expressly requested, I don't know that  
3 they keep a word-for-word transcript. The City  
4 Clerk would have to answer that question.

5 Q. Was the proposed amendment to change to  
6 seven single-member districts discussed at the  
7 public hearing?

8 A. I can't recall what the speakers said. I  
9 can't recall.

10 Q. Have you personally taken any action on  
11 the proposed agenda item of a change to  
12 single-member districts since the Council voted on  
13 the 2019 Legislative Agenda?

14 A. Other than just general discussions, which  
15 I referenced earlier I participated in, I have not  
16 been out actively in the community advancing this  
17 as an issue. I've been consumed with addressing  
18 the flooding problem.

19 Q. So you've been focusing on other issues?

20 A. Correct.

21 Q. Would that be fair?

22 A. Correct.

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1 Q. Why did you propose to make seven of the  
2 seats single-member districts but keep three  
3 at-large?

4 A. Well, four at-large --

5 Q. Four at-large?

6 A. -- including the Mayor. As I mentioned  
7 earlier, I believe there is an -- all district  
8 systems tend to -- not unlike the House of  
9 Representatives, they tend to promote more vote  
10 trading which, generally, has the impact of  
11 increasing the size and the expense of government  
12 because everybody is trying to get something in  
13 their district, you know, to take back the bacon  
14 so to speak. So there is that aspect. So they  
15 tend to be -- have a trend to spend more.

16 In order to -- then there is a balance  
17 that that's, like, the Senate -- people looking at  
18 the broader interest of the city and looking at  
19 larger fiscal issues and understand the bigger  
20 consequences. So that's one of the reasons why I  
21 think that having a hybrid system is better.

22 Secondly, district people tend to get

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1 recognized for advancing their district interest  
2 because now they're exclusively accountable just  
3 to that district, just like the Congressmen are.  
4 But there are issues that are bigger for the  
5 bigger at-large city that need advocacy, as well,  
6 not unlike the U.S. Senate, someone who's speaking  
7 for the state as a whole. And the at-large system  
8 provides that voice also to be heard. And you  
9 need the competition between the larger macro as  
10 the city and the more parochial issues of  
11 districts. That's, also, a type of competition.  
12 And competition always, generally, benefits the  
13 public.

14 So while single districts promotes  
15 competition in a different way, you need to  
16 balance that out so at the end, like a balanced  
17 portfolio, you get the optimal decision-making and  
18 ultimately the best public interest calculus comes  
19 out.

20 Q. This proposal would have called for the  
21 seven single-member districts to be in place for  
22 the next round of redistricting, correct?

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1 A. Correct.

2 Q. All right. I'd like you to turn to page  
3 29 of this document, which I will represent to you  
4 is the second tab. This is a document that was  
5 produced by Council Member Jessica Abbott. It  
6 starts with two paragraphs of bolded text at the  
7 top and is a written summary by Council Member  
8 Abbott of her top priorities for the 2019 Council  
9 retreat. Would you like a second to read through?

10 A. I've read that second paragraph.

11 Q. The whole document.

12 A. The whole document?

13 MR. BOYNTON: She has many, many pages  
14 here of that.

15 Is there a part you'd like him to focus  
16 on?

17 Q. I'd like you to read -- I want you to  
18 focus on the next page, the very bottom of the  
19 next page. That, also, goes on to page 31. I'm  
20 looking at the very bottom down there. It's a  
21 paragraph that starts, "I favor a district voting  
22 approach..." Do you see that?

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1 A. I do.

2 MR. BOYNTON: So review that.

3 A. Okay.

4 Q. So in that first part Ms. Abbott writes  
5 that she favors a district voting approach and the  
6 redistricting of 10 voting districts through the  
7 City of Virginia Beach to singularly elect their  
8 district representative and the Mayor to be  
9 elected at large.

10 Would you also support a proposal of 10  
11 single-member districts?

12 A. As I stated earlier in my deposition, I  
13 would favor both questions being asking, asking  
14 the public do they choose to have a hybrid system  
15 or would they prefer to go to 10 district systems.  
16 And I would accept the judgment of the public.  
17 But I would be an advocate for the hybrid system.  
18 But ultimately it's a choice of the public to  
19 make, and I would respect that choice.

20 Q. Would you oppose -- if the public  
21 supported a 10 single-member district system,  
22 would you oppose it?

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1           A. As I just stated, if the public in a  
2     referendum votes in the majority that this is the  
3     system they want, I'm a voice of the public, not  
4     my own voice, and I would be a strong advocate for  
5     the voters' choice.

6           Q. All right. In the next sentence  
7     Ms. Abbott writes, "District elections give  
8     geographically concentrated groups of voters a  
9     better chance of being represented."

10          Do you see that?

11          A. Yes, I do.

12          Q. Would you agree with that statement?

13          A. I would rephrase that to say that it gives  
14     the people who live in that district a better  
15     ability to hold them accountable. That's not the  
16     same thing as they will be more responsive, but  
17     they can hold them accountable.

18          Q. So the sentence says, "District elections  
19     give geographically concentrated groups of voters  
20     a better chance of being represented."

21          A. I think --

22          Q. It doesn't say anything about --

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1 MR. BOYNTON: You said "therefore being  
2 more responsive."

3 MS. HARLESS: No. No. You're looking at  
4 a different sentence.

5 MR. BOYNTON: I'm sorry.

6 Q. I'm looking at the very next sentence  
7 following the one we just discussed. It's on the  
8 bottom of the page.

9 A. "Being represented." I would concur with  
10 that. I'm sorry. I thought you said in  
11 responsive.

12 Q. So just for the record, just to get the  
13 record straight, the sentence says, "District  
14 elections give geographically concentrated groups  
15 of voters a better chance of being represented."

16 A. That is correct.

17 Q. And you'd agree with that?

18 A. I would.

19 Q. Okay. Now, let's turn to the next page.  
20 And I'm looking two sentences down that starts "I  
21 believe that incumbents..." Do you see that?

22 A. I do.



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1 Q. Ms. Abbott states, "I believe that  
2 incumbents would find themselves to be less  
3 insulated from the competition of challengers  
4 because it is easier and less costly to run a  
5 grassroots campaign in a district consisting of  
6 roughly 30,000 neighbors rather than 300,000  
7 voters in the largest city of Virginia." Would  
8 you agree with that?

9 A. I think that's a truism. Yes.

10 Q. Now, further down in the paragraph in the  
11 sentence that starts most U.S. -- "Most large U.S.  
12 cities..." Do you see that?

13 A. Uh-huh.

14 Q. Ms. Abbott writes, "Most large U.S. cities  
15 with populations over 200,000 people use district  
16 voting, and our outdated hybrid system should be  
17 modernized to reflect the current needs of our  
18 city and its citizens." Do you agree with that  
19 statement?

20 A. I don't know that to be factually true.  
21 There is no footnote. Relative to most large  
22 cities, I don't know what the universe of large

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1 cities is. And I don't know if that's 10 large  
2 cities, 50, that "most" defines. So I can't  
3 concur with the accuracy because it's not  
4 footnoted as to the source of it.

5 Q. Okay.

6 A. And furthermore --

7 MR. BOYNTON: Continue if you want.

8 That's fine. I just --

9 Q. Would you agree that the city's current  
10 hybrid system is outdated?

11 A. If you say the current system is outdated,  
12 but you cannot extrapolate that to mean that if  
13 you went to seven district systems it would be  
14 outdated. So if you said the current system, the  
15 answer would be yes.

16 Q. So all I'm asking is would you agree that  
17 the city's current hybrid system is outdated?

18 A. All at-large voting, correct.

19 Q. Do you think the city's current hybrid  
20 system is unusual in any way?

21 A. Oh, it's extremely unusual.

22 Q. Why?

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1           A. Well, if I remember correctly, it had to  
2     be validated by a Supreme Court decision, if I  
3     remember correctly, when it was first put together  
4     of the borough district systems. And it's kind of  
5     unusual in that regard. It's very unique. But it  
6     goes back. If you look at the history of the city  
7     at the time, it's certainly self-explanatory as to  
8     why we had that system to start with. But I don't  
9     know you want to go into a history lesson here,  
10    but, if you do, I'm happy to share it.

11          Q. I'm more interested in why you think the  
12    system is unusual.

13          A. Well, it's unusual because it represents  
14    what was necessary at the time of the merger of  
15    the City of Virginia Beach with the County of  
16    Princess Anne, to get something that both the  
17    agricultural lawyers and the city could live with  
18    and accept to create the merger. So it's in the  
19    context of its conception that makes it unusual.  
20    And without that understanding, you wouldn't know  
21    how it ever got to be. But it is the uniqueness  
22    of how the little resort strip and the county came

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1 to be one big city that makes it unique. And  
2 those circumstances haven't been replicated  
3 elsewhere. And so that's why it's an unusual  
4 situation.

5 Q. Do you know of any other cities that have  
6 a system similar to Virginia Beach's?

7 A. I do not.

8 Q. All right. I'd like you to turn to page  
9 71 of this, which I will represent is the third  
10 tabbed page here.

11 MR. BOYNTON: And just, may I -- just put  
12 some context.

13 MS. HARLESS: I am about to.

14 MR. BOYNTON: Thanks.

15 Q. It's actually that page, the page with the  
16 tab on. He was looking at it. You were looking  
17 at the other page.

18 I'm directing you to the very bottom of  
19 the page where there is bolded text. And it says  
20 "December 9th, 2017 - Data from Contested District  
21 Seat Elections in Virginia Beach and Norfolk Since  
22 2008." Do you see that?

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1 A. Uh-huh. I do.

2 Q. If you turn the page, this continues. And  
3 there is an image and a link to a Facebook post by  
4 Jessica Abbott. Do you see that?

5 A. I do.

6 Q. Underneath the link the text states, "Last  
7 week, a lawsuit was filed against the City of  
8 Virginia Beach regarding violations of the Voting  
9 Rights Act. The lawsuit makes the argument that  
10 the city dilutes minority voting strength on the  
11 Virginia Beach City Council from an at-large  
12 voting system." Do you see that one?

13 A. Uh-huh.

14 Q. And one paragraph below Ms. Abbott writes,  
15 "I support much of what this lawsuit seeks to  
16 accomplish."

17 Do you also support much of what the  
18 plaintiffs' lawsuit in this case seeks to  
19 accomplish?

20 A. No.

21 Q. Why?

22 A. Because I think this choice belongs to the

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1 voters to decide in a referendum and shouldn't be  
2 adjudicated in a court of law.

3 Q. And the next paragraph Ms. Abbott states  
4 that "The only requirement to serve in a district  
5 seat is residency. It is entirely possible for a  
6 candidate to lose their own district but win  
7 elsewhere in the city and still get elected."

8 A. Yes.

9 Q. I know we've discussed this earlier. You  
10 would agree with that statement, correct?

11 A. Correct. It's happened -- in 2018 it also  
12 happened. Louis Jones lost his district but won  
13 citywide. David Nygaard ultimately disqualified,  
14 lost -- won his district. And John Uhrin, who was  
15 the incumbent, won his district but lost citywide.  
16 So you had both situations take place. And that  
17 was in the most recent Council election.

18 Q. That also happened to Al Balko?

19 A. Yes. And that was back in 1990.

20 Q. Can you think of any other examples?

21 A. Those are the only ones I can recall.

22 Q. Jessica Abbott endorsed your campaign for

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1 City Council?

2 A. Correct.

3 Q. Besides what we've discussed already  
4 today, have you had any conversations with any  
5 current City Council members about changing to a  
6 district-based, rather than at-large, election  
7 system for City Council seats?

8 A. I am certain at times and dates that I  
9 cannot specify that Jessica and I have had  
10 conversations. And I might have had some with  
11 Rouse. This is -- you know, it could have come up  
12 at a social event, anywhere. It's just not in  
13 a -- in a casual sense, not like, oh, let's have a  
14 meeting and sit down and talk about this. In the  
15 course of other conversations it could come up,  
16 but I couldn't tell you when or what places.

17 MR. BOYNTON: Again, because we're getting  
18 into the more private nature of conversations,  
19 identify who you're talking with but don't get  
20 into the content of the conversation.

21 A. It would be most likely Jessica, and  
22 probably Aaron. Probably not the others.

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1 Q. Were any of those conversations outside of  
2 the context of closed City Council meetings?

3 A. Oh. Well, yes.

4 Q. Do you remember any of them specifically?

5 A. Well, this gets back to the one-on-one  
6 conversations. I'm not qualified --

7 MR. BOYNTON: You can say the context of  
8 the conversation. But our position is they're  
9 private conversations. They don't have to be  
10 physically in the halls of government to be  
11 protected by legislative privilege. You can  
12 answer the question as to who you had the  
13 conversations with and where they were.

14 A. I'm sure the context was about do you  
15 think we can get the votes to have a referendum in  
16 2020. I'm sure they're in that nature.

17 MR. BOYNTON: Again, you're asking content  
18 as opposed to --

19 A. All I can say, the general nature was  
20 about that issue.

21 Q. Are you following your counsel's  
22 instructions and you're not waiving the



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1 legislative privilege?

2 A. I'm not waiving legislative privilege, no.

3 Q. Besides what we've already discussed  
4 today, have you had any conversations with any  
5 former City Council members about changing to a  
6 district-based --

7 A. No.

8 Q. -- rather than at-large system?

9 A. No.

10 Q. Besides what we've already discussed  
11 today, have you had any conversations with the  
12 current Mayor of Virginia Beach about changing to  
13 a district-based, rather than at-large, election  
14 system?

15 A. Nothing that wouldn't be covered by  
16 legislative privilege, no.

17 Q. Besides what we've already discussed  
18 today, have you had any conversations with any  
19 former Mayor of Virginia Beach about changing to a  
20 district-based election system?

21 A. No.

22 Q. Why do you laugh?

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1           A. Just Mayor Sessoms and I had very few  
2       conversations.

3           Q. Besides what we've discussed already  
4       today, have you had any conversations with anyone  
5       else about changing to a district-based, rather  
6       than at-large, election system for City Council  
7       seats?

8           A. Not that I can recall. It's not a hot  
9       topic.

10          Q. Have you done any interviews with  
11       reporters before about it?

12          A. Obviously, I did those interviews  
13       (indicating). But we've talked about it. If I  
14       did, they would be reported. You're asking me can  
15       I recall them. No. I get asked lots of  
16       questions, but I can't recall. I'm not trying to  
17       be evasive. I just can't remember.

18          Q. Do you ever talk to constituents about it?

19          A. If they ask. It's not something that  
20       would stick in my brain and say, oh, on this day I  
21       spoke with so and so. But if someone asks me  
22       about it, would I be responsive? Yes. But do I

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1 have a recollection of those? No. But I do tell  
2 them the position which I've shared here.

3 Q. Uh-huh.

4 And just to be clear, there have been two  
5 referendums in the city's past on the change to a  
6 single-member district system?

7 A. One took place when I was not here, so I  
8 don't have the -- that's what -- the outcome. One  
9 was yes and one was no. You'd have to go back to  
10 the City Clerk to get those results.

11 Q. What was the referendum that took place  
12 when you weren't there?

13 A. That would be the one that was no.

14 Q. Which year?

15 A. You're going to have to go to the City  
16 Clerk and ask. I just don't recall. But I know  
17 there was a second one. And it's often mentioned  
18 by the other side when it comes up.

19 Q. What do you mean, mentioned by the other  
20 side?

21 A. People talk about, hey, people said they  
22 wanted it. And, then, people on the other side

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1 who don't support it say, oh, yes, but remember we  
2 had another referendum and the people said they  
3 wanted to keep the current system. So there are  
4 two different answers at two different points in  
5 time. In the end, it's the public's choice,  
6 right?

7 Q. All right.

8 MS. HARLESS: We're going to mark another  
9 exhibit. I believe this is Exhibit 4.

10 (Exhibit 4 was marked and  
11 attached to the transcript.)

12 Q. Mr. Moss, you've just been handed what was  
13 marked Exhibit 4 by the court reporter. Similar  
14 to the document we just looked at or the set of  
15 documents we just looked at, I'm going to  
16 represent to you that this is a subpoena that was  
17 sent to Council Member Jim Wood by the plaintiffs  
18 in -- I guess is he a Council member or Vice Mayor  
19 or both?

20 A. Vice Mayor.

21 MR. BOYNTON: Presently Vice Mayor.

22 Q. I'll represent to you this is a subpoena

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1 that was sent to Vice Mayor Jim Wood by the  
2 plaintiffs in this case, similar to the one that  
3 was sent to you. And the documents attached here  
4 were produced by Vice Mayor Wood in response to  
5 that subpoena.

6 And I'd like you to turn to page 10 of  
7 this document. And at the top this document has  
8 James Wood's official city letterhead. And it's  
9 dated June 25th, 2019. Do you see that?

10 A. Uh-huh.

11 Q. And the subject line says response to  
12 subpoena, correct?

13 A. Uh-huh. That's what it says.

14 MR. BOYNTON: Yes or no?

15 A. Yes.

16 Q. So I'd like you to turn to page 3. There  
17 is numbered pages at the top of this document.  
18 And I want you to look at the numbered category  
19 15. This document production request reads,  
20 "Provide any and all documents, communications,  
21 and things related to allegations of racial  
22 appeals or racist incidents in political campaigns

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1 in Virginia Beach from January 1st, 2000 to the  
2 present."

3 Mr. Wood's response says, "See Attachment  
4 A." Correct?

5 A. It does say "See Attachment A."

6 Q. Turn three pages in this document. Do you  
7 see Attachment A?

8 A. Uh-huh.

9 MR. BOYNTON: Well, read the Attachment A  
10 part before you get to the document.

11 Q. The text on the page says, "Screenshot of  
12 a text message where a candidate reported to me  
13 that poll workers for another candidate were  
14 handing out different color handouts depending  
15 upon the race of the person they encountered at  
16 the polling place."

17 A. I do read that.

18 Q. Do you see that?

19 A. I do.

20 Q. Were the poll workers referenced there  
21 working for your campaign?

22 A. Which poll workers?

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1 MR. BOYNTON: Let him review the document  
2 first before --

3 A. Is there names?

4 Q. I'm talking about the comment here  
5 (indicating).

6 MR. BOYNTON: How would he know?

7 A. How would I know poll workers? I don't  
8 know who that is.

9 Q. You can answer the question.

10 MR. BOYNTON: I think it requires him to  
11 look at the document that is the Attachment A.  
12 And I object to the question until he has reviewed  
13 the document.

14 MS. HARLESS: He's welcome to look at any  
15 pages of this document and answer the question.  
16 No one has told him he can't.

17 MR. BOYNTON: Why don't you review the  
18 actual Attachment A before you answer the  
19 question?

20 A. Can I ask a question? I hope. Can you  
21 define who are the universal poll workers and who  
22 is the universe for another candidate?

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1 Q. So I didn't write this. Jim Wood wrote  
2 this.

3 A. Okay. Well, I can't answer the question  
4 because I don't know who the poll workers are and  
5 I don't know who another candidate is. Without  
6 specificity, I cannot answer that ambiguous  
7 question -- ambiguous statement.

8 Q. Let's look at the next page.

9 A. Next page being?

10 Q. The next page of the document. This has  
11 two columns of text messages with images of the  
12 colored ballots that were being handed out in  
13 2018, according to the prior page. There are two  
14 columns of text messages on this page. Do you  
15 seat that?

16 A. I can't discern them, but I can tell that  
17 they're --

18 Q. No. No. The text messages themselves.  
19 There is two. There is a left column and a right  
20 column of text messages, correct?

21 A. I'm reading this. Correct.

22 MR. BOYNTON: I think she's just asking



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1 you if you turn it on the side are there two  
2 separate columns? Turn it. Landscape mode.  
3 There you go. Two columns. One column. Two  
4 columns.

5 A. Yes. There are two columns. Sorry.

6 Q. I'm just trying to orient you because I'm  
7 going to ask you to look at the right text  
8 message, so the top of the right column. Do you  
9 see the name Dee?

10 A. Right here (indicating)? Is that what  
11 you're referring to?

12 Dee. Okay. Yes. I see that.

13 Q. Dee Oliver was the candidate running for  
14 an at-large seat in 2018, correct?

15 A. She was.

16 Q. And you only --

17 A. Yes.

18 Q. And you only beat her by a small number of  
19 votes, right?

20 A. I won by a small number of votes, yes.

21 Q. And, in fact, there was a recount,  
22 correct?

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1 A. Correct.

2 Q. And so do you understand -- this page,  
3 along with the prior page, Attachment A, do you  
4 understand these to be text messages from Dee  
5 Oliver to Jim Wood?

6 MR. BOYNTON: Objection. Lack of  
7 foundation.

8 A. I do not know that.

9 Q. Do you question whether Attachment A was  
10 produced by Jim Wood?

11 A. Attachment A? This being Attachment A?  
12 That says that statement is his statement,  
13 correct?

14 Q. Correct.

15 A. His statement does not contain the word  
16 Dee Oliver, so if I can take that as correct --

17 Q. His statement says, "Screenshot of a text  
18 message where a candidate reported to me that poll  
19 workers for another candidate" -- and the  
20 candidate -- you see the name Dee Oliver at the  
21 top?

22 MR. BOYNTON: Respectfully, the only thing

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1 at the top is Dee.

2 A. There is no Oliver.

3 Q. You see the name Dee at the top?

4 A. Correct. I do see Dee at the top.

5 Q. Do you believe that to be Dee Oliver?

6 A. I have no -- I have no basis to believe it  
7 is or that it isn't.

8 Q. So sitting here today, you don't know for  
9 sure whether that's Dee Oliver who's texting Jim  
10 Wood; is that correct?

11 A. That's correct.

12 Q. If you look at the left column of texts,  
13 Dee writes that there are three colors of sample  
14 ballots. Do you recognize these sample ballots to  
15 be ballots handed out by your campaign?

16 A. I can't discern the details of them, so I  
17 can't answer that in the affirmative. I mean, I  
18 can't see what the disclosure statement is. Is my  
19 campaign disclosure statement on the sample  
20 ballot? I can't read that from here. That's not  
21 discernible. And I don't know who was handing  
22 them out, so I can't say, yes, that my campaign

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1 workers were or weren't. But I can't read the  
2 disclosure statement on the ballot itself.

3 Q. Did your campaign ever produce sample  
4 ballots that looked like this?

5 A. I don't want to say yes or no. I know we  
6 had a sample ballot, but I don't remember us  
7 having two different colors of the sample ballot.  
8 But I -- without seeing these in the full text and  
9 seeing the disclosure statement, I can't be  
10 responsive to your question in an affirmative way.  
11 But if you had the hard copies of them in greater  
12 resolution so it's discernible, I would be happy  
13 to respond.

14 Q. Have you ever heard anyone claim that a  
15 poll worker working for your campaign was handing  
16 out different colored handouts depending upon the  
17 race of the person they encountered at a polling  
18 place?

19 A. No. And all of my people that work polls  
20 were volunteers. And who might have shown up, I  
21 don't have a full who worked where. Yes, I do  
22 have poll workers. But I do not recall someone

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1 saying I'm handing out ballots based upon the race  
2 of the candidates. No, I did not.

3 Q. So if that happened, you're not aware of  
4 it?

5 A. Correct.

6 Q. One more question. You can't read  
7 anything on these sample ballots?

8 A. Well, I can't read -- I can read sample  
9 ballot. I can't read the disclosure statement  
10 that would be on a sample ballot. I can -- if I  
11 stretch, I can see John Moss. I can see Louis  
12 Jones. I can see check marks. But the key part  
13 that you want to be able to read, which is this  
14 part at the bottom, which I guess is the  
15 disclosure statement, that's totally not  
16 discernible to me.

17 Q. What is Friends of the Elephant?

18 A. That's not part of my campaign. That's a  
19 separate organization, I think. That's not my --  
20 my campaign would say John D. Moss Campaign. So  
21 you'd have to go and look at the Federal Election  
22 and look at the filing cost to see who Friends of

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1 the Elephant is.

2 Q. You don't know anything about Friends of  
3 the Elephant?

4 A. I know who they are. They actually gave  
5 me a campaign contribution. That's all I can tell  
6 you. I got a campaign contribution from them.  
7 It's a matter of public record. But I can't tell  
8 you, you know, who all their membership is.

9 That's one of these things I had no involvement  
10 in. They were not members of my campaign or  
11 anything of that nature. There was no  
12 interlocking directorship or corporation, no.

13 Q. Do you know any name of any individual at  
14 Friends of the Elephant?

15 A. I do know one name is Gary Byler.

16 Q. How do you spell that?

17 A. B-Y-L-E-R.

18 Q. Who's Gary Byler?

19 A. An attorney.

20 Q. Where does he work?

21 A. I think he works for himself. And he's --  
22 I think if you go look at the State Board of

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1 Elections or whoever keeps all that stuff, you can  
2 get all that information about who Friends of the  
3 Elephant is because they would be registering. I  
4 do not have knowledge here.

5 Q. So if we look at that same text message,  
6 you said you could read your name listed there,  
7 correct?

8 A. The image? Not the text?

9 Q. The image sent in the text message.

10 A. Yeah. I mean, I really stretch -- I can't  
11 see it on the blue -- on the pink one. I can't  
12 really see that -- my name there. It's hard to  
13 see. I think that's my name. But it's very clear  
14 it's my name on the bluer one, but I can't --  
15 looks like it's Moss on the pink, but I'm having  
16 to squint a bit. I think that's my name there. I  
17 can't affirmatively say that is.

18 Q. Looking at that image still --

19 A. Which one?

20 Q. The same one we were looking at.

21 A. The pink or the blue?

22 Q. Both.

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1 A. Okay.

2 Q. Can you tell that one version of the  
3 sample ballot lists Aaron Rouse's name and one  
4 does not?

5 A. Louis Jones.

6 Yes. I can tell that.

7 Q. Are you aware whether the sample ballot  
8 that did not include Aaron Rouse's name was handed  
9 only to white voters?

10 A. I have no knowledge of that. No, I  
11 cannot.

12 Q. Are you aware whether the sample ballot  
13 that was handed out to black voters did include  
14 Aaron Rouse's name?

15 A. I have no knowledge of that either.

16 Q. Do you have any idea why there were  
17 different sample ballots?

18 A. I can talk to -- if one of these ballots  
19 was authorized and has my authorization -- I can  
20 only speak to the one from my campaign rep. I  
21 can't speak to something that somebody else  
22 authorized.



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1 Q. Put that aside.

2 MR. BOYNTON: The entire exhibit?

3 MS. HARLESS: Yep.

4 Let's mark this as Exhibit 5.

5 (Exhibit 5 was marked and  
6 attached to the transcript.)

7 Q. Mr. Moss, you've just been handed what is  
8 marked Exhibit 5 by the court reporter. Have you  
9 seen this document before?

10 A. Well, yes.

11 Q. What is it?

12 A. An email exchange between Dave Hansen and  
13 myself. But can I have the opportunity to refresh  
14 my memory?

15 Q. You can.

16 A. Thank you very much.

17 Okay.

18 Q. All right. Do you see in the bottom  
19 right -- well, what is this document?

20 A. This is an email exchange between then  
21 City Manager Dave Hansen and myself. He's --  
22 initially my response to him was asking for

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1 additional --

2 MR. BOYNTON: She just wanted you to  
3 authenticate the document. She didn't ask you for  
4 commentary.

5 Q. And it's dated --

6 MR. BOYNTON: Answer the question.

7 Q. -- January 20, 2017, correct?

8 A. She said, well, what is it? I was going  
9 to tell her what it is.

10 Q. You're very thorough.

11 It is dated January 10th, 2017, correct?

12 A. Correct.

13 Q. Do you see in the bottom right that this  
14 document is marked with the letters D-E-F and the  
15 numbers 08407?

16 A. Correct.

17 Q. I'll represent to you that this is a  
18 document produced by the defendants and your  
19 counsel in this case in response to plaintiffs'  
20 document production requests. Does that make  
21 sense?

22 A. Yes.

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1 Q. Let's start with the email at the bottom  
2 of the page, which is from you to Dave Hansen,  
3 right?

4 A. Correct. Yes.

5 Q. At the time you sent this email in 2017,  
6 you were a City Council member?

7 A. Yes.

8 Q. Why were you emailing Mr. Hansen from your  
9 personal Gmail address rather than your city email  
10 address?

11 A. As I mentioned before, there is no  
12 legislative requirement that I have to provide and  
13 conduct my business on a vbgov account. And I  
14 choose not to. And as you can see, the record was  
15 recoverable. And that complies with the FOIA  
16 requirements.

17 Q. Uh-huh.

18 So in this email you refer to a briefing?

19 A. Correct.

20 Q. Do you see that?

21 A. Correct.

22 Q. What was the briefing that you were

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1 referring to?

2 A. The briefing that we received in the  
3 informal session, if I remember correctly, it was  
4 about our efforts to go out and secure and do --  
5 secure a consultant to do a disparity study.

6 Q. The top of Exhibit 5, this is a reply  
7 email from Mr. Hansen to you, right?

8 A. It is.

9 Q. Do you need a second to read it?

10 A. I've read it. Thank you.

11 Q. In the third sentence of the reply  
12 Mr. Hansen says that "SWaM is easy to obtain,  
13 hence why we think the sheltered bidding would be  
14 helping in preserving race neutral completion for  
15 small business."

16 At the time that email was sent, the city  
17 had actually not obtained parity in contracts with  
18 small, minority-owned businesses, correct?

19 A. We had not yet achieved the goal we had  
20 set, correct.

21 Q. In the email Mr. Hansen continues,  
22 "Race-based set-asides are most problematic and

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1 that is the target of a disparity study. Very  
2 emotional subject."

3 Would you agree that race-based set-asides  
4 are problematic?

5 A. Yes, only because of the judicial issues  
6 that have dealt with in litigation at various  
7 different levels. You have to be careful because  
8 there are very certain standards you have to meet.  
9 I don't know if you consider that problematic, but  
10 you have to be careful to stay within all the  
11 judicial precedents that deal with those types of  
12 issues, yes.

13 Q. Any other reasons?

14 A. No.

15 Q. Are you opposed to race-based set-asides?

16 A. I'm opposed to anything that isn't in  
17 compliance with established judicial and  
18 legislative precedent, yes.

19 Q. If a race-based set-aside was in  
20 compliance with judicial precedent, would you be  
21 opposed to it?

22 A. No.

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1 Q. In the email Mr. Hansen then says to you,  
2 "Appreciate your patience this evening allowing it  
3 to play out." Do you see that?

4 A. Uh-huh.

5 Q. Are you aware of what Mr. Hansen is  
6 referring to there?

7 A. I'd only have to infer that the Council  
8 stayed longer to talk that day and went over the  
9 6:00 parameter, more than likely, and led to  
10 Council staying longer, I'm assuming. But I don't  
11 know what his state of mind was, no.

12 Q. Did you personally always support a full  
13 disparity study?

14 A. I don't know what full means, but I have  
15 never opposed a disparity study. I don't know  
16 what full means, but I --

17 Q. Did you --

18 A. -- have not been in favor of doing things  
19 that aren't in compliance with legislative and  
20 judicial precedent.

21 Q. Okay. Did you ever advocate for doing a  
22 disparity study in phases?

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1 A. I did.

2 Q. Did you ever advocate for only doing  
3 certain phases before continuing on to the rest?

4 A. I did.

5 Q. Can you elaborate on that?

6 A. No.

7 Q. Which phases of a disparity study did you  
8 support?

9 A. Well, obviously, if you support phases,  
10 you have to support the first phase before you can  
11 go to phase two or three. And the importance of  
12 that is you get -- just like in any other  
13 professional work you do, you learn something from  
14 phase two which you would use you to what? Help  
15 you inform your work from phase two. I'm just a  
16 logical person. But that's my answer.

17 It's just nothing about the study per se.  
18 I would approach that to any kind of study, to do  
19 it in phases because you learn something at each  
20 phase which informs the next phase.

21 Q. You'd agree that the disparity study found  
22 that overall the participation of minority-owned

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1 businesses in contracts that the city awarded  
2 during the study period was substantially lower  
3 than one might expect based on the availability of  
4 those businesses for that work, correct?

5 A. That was the finding and conclusion of the  
6 report, yes.

7 Q. You can set that exhibit to the side.

8 MS. HARLESS: We'll mark this as Exhibit  
9 6.

10 MR. BOYNTON: Are we nearing either an end  
11 or a break point in the next few minutes?

12 MS. HARLESS: We can take a break.

13 (A recess was taken.)

14 (Exhibit 6 was marked and  
15 attached to the transcript.)

16 Q. This document has just been marked as  
17 Exhibit 6 by the court reporter. I'll give you a  
18 second to look at it. And, then, can you just let  
19 me know yes or no whether you've seen this  
20 document before?

21 MR. BOYNTON: It may be helpful to go all  
22 the way to the back first and review it in time



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1 sequence.

2 A. Okay.

3 Q. Have you seen this document before?

4 A. No.

5 Q. All right. If you look in the lower right  
6 corner, there are the letters D-E-F and the  
7 numbers 09810 through 09813, correct?

8 A. Correct.

9 Q. I'd like you to turn to page 09813, which  
10 is the last page. At the very bottom there is an  
11 email on June 16th, 2015 from Dave Hansen to John  
12 E. Fowler and Phil A. Davenport, correct?

13 A. Correct.

14 Q. Who is John E. Fowler?

15 A. I'm not certain who that is. I know who  
16 Phil Davenport is. But John E. Fowler is not a  
17 name that's registering with me. Maybe it should.  
18 If I saw a face, it might. But the name is not  
19 registering.

20 Q. Who is Phil Davenport?

21 A. He was at the time, I believe, the  
22 Director of Public Works.

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1 Q. The subject of this email is AE selection  
2 process. Do you see that?

3 A. Uh-huh.

4 Q. Do you know what AE selection process --

5 A. Architectural engineering. Architectural  
6 engineering.

7 Q. In the text of the message Mr. Hansen  
8 wrote, "Need a briefing on the process. Need the  
9 dollars spent on who over the last three years.  
10 Councilman Moss is questioning our reliance on a  
11 select few. We need to prepare to respond in  
12 advance of the question being asked. Dave."

13 Are you aware of what Mr. Hansen is  
14 referring to when he said Councilman Moss is  
15 questioning our reliance on a select few?

16 A. I have consistently, across a number of  
17 issues -- and I don't know what this issue refers  
18 to. But the city seems to have a pattern of  
19 always going to a certain number of firms for any  
20 work and other types of work. And he probably  
21 knows that I'm a very inquisitive person. By my  
22 reputation, I always ask a lot of questions. I'm

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1 wondering what a pattern is, how is it that the  
2 same people are always, like, people we go to to  
3 get work done at and are we getting the best  
4 value.

5           It seems like that would be statistically  
6 unusual for the same people to always be getting  
7 the work. He knows I ask those types of  
8 questions. I don't know his state of mind because  
9 he references in advance, knowing I haven't asked  
10 anything yet. But he's anticipating I'm going to  
11 ask. He's wanting the people to spool up and be  
12 able to answer my question when I ask it. That's  
13 how I take this to read. And that -- I have no  
14 other -- I have no knowledge of this.

15           Q. I'm not asking about any of Mr. Hansen's  
16 intent. I'm -- he states, "Coucilman Moss is  
17 questioning our reliance on a select few." And  
18 I'm just wondering if you know specifically what  
19 that's referring to?

20           A. At this point, in context, I can't tell  
21 you specifically what he's referencing. But, in  
22 general, I always ask questions where there

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1 appears to be a pattern that would suggest that  
2 maybe competition hasn't been in place.

3 Q. Do you know who the select few in this  
4 particular email are?

5 A. I have no idea.

6 Q. I'd like you to turn to page 09811 of this  
7 document.

8 A. Uh-huh.

9 Q. And towards the top of the page there is  
10 an email sent on June 17th, 2015 from John E.  
11 Fowler to various, what appear to be, city  
12 employees; is that correct?

13 A. This is the one that says to Rob Clark,  
14 Rich Nettleton, Bobby J. Wheeler, and Nancy  
15 Keenan? Is that the one you're referring to  
16 (indicating)?

17 Q. It's from -- yes.

18 A. Okay. That reflects that I'm talking on  
19 Wednesday, June 17th, email on John E. Fowler to  
20 Rob Clark referencing AE selection process.

21 Q. Yes. Do you know who Rob Clark is?

22 A. I do not.

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1 Q. Do you know who Rich Nettleton is?

2 A. Not by name. I might know by face. No.

3 Q. Do you know Bobby J. Wheeler?

4 A. Nope.

5 Q. Do you know Nancy Keenan?

6 A. No. I do not know any of these people by  
7 name. If I saw them in person, I might recognize  
8 them from the informal sessions, but not by name.

9 Q. In the body of the email Mr. Fowler  
10 writes, "Also, you should watch the video of last  
11 night's Council meeting. Mr. Moss was talking  
12 about procurement in general; don't know why we're  
13 zeroing in on A/E professional services selection  
14 - but that's the direction."

15 Do you remember what comments you were  
16 making about procurement?

17 A. No, but this does affirm my earlier  
18 remarks that I, in general, ask questions. And it  
19 appears there is a pattern that reflects a lack of  
20 competition. But I do not have a direct  
21 recollection of that particular meeting.

22 Q. Does the city video record Council

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1 meetings?

2 A. And the informal sessions, correct.

3 Q. And would a video from the June 16th, 2015  
4 Council meeting still be available on the city's  
5 website?

6 A. I would defer to the city to answer that  
7 question.

8 Q. So you don't know?

9 A. I'd like to think it is, but I do not  
10 affirmatively know. And this is 2015.

11 Q. Uh-huh.

12 So please turn the page to the page number  
13 09810.

14 A. Yes, ma'am.

15 Q. And I want you to look at the bottom.  
16 It's an email from Tom Leahy, dated June 18, 2015,  
17 to various other individuals, correct?

18 A. Correct.

19 Q. And we already went through, you don't  
20 know who Rob Clark is? You do know who Phil  
21 Davenport is?

22 A. Uh-huh.

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1 Q. You don't know who Rich Nettleton is?

2 A. Correct.

3 Q. You do know who Marilyn Crane is?

4 A. No. But I do know who Tom Leahy is.

5 Q. Who is Tom Leahy?

6 A. He was, I think at this time -- I don't  
7 know this, but he might have been the Director of  
8 Public Utilities or he had taken the position of a  
9 Deputy City Manager whose portfolio was over  
10 Public Works and Public Utilities. I'm just not  
11 certain that it happened by that date. It might  
12 have been later.

13 Q. In this email Mr. Leahy says that he  
14 watched the Council meeting video, we just  
15 discussed. And he lists a series of allegations  
16 from minority-owned businesses he took away from  
17 the meeting. Do you see that, just generally?

18 A. I do.

19 Q. One of the allegations he lists was that  
20 the way -- "The way we write our RFPs includes a  
21 bias that tends to preclude minority firms from  
22 qualifying."

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1 Did you agree with that allegation?

2 A. I can't recall the context at the time. I  
3 wouldn't say -- if I was looking -- bias tends to  
4 preclude -- I would tend to say there is a bias --  
5 preclude is a word I probably would not use, but  
6 certainly a bias that maybe discourages or works  
7 against. But preclude means that they can't in  
8 any way be successful. I don't know that I would  
9 use the word preclude.

10 Q. So would you agree that the way the city  
11 writes their RFPs included a bias that tends to  
12 discourage minority firms from qualifying?

13 A. I would think that's probably closer to  
14 where I would be, yes.

15 Q. Another allegation listed was that "The  
16 same firms always get the work."

17 We already discussed this somewhat. But  
18 did you agree with that allegation?

19 A. That certainly is the appearance, yes.  
20 The reason why is unknown, but yes.

21 Q. The next -- there is another item that  
22 says minority -- "Minority firms are told they are



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1 not qualified so they simply give up."

2 A. I can't agree or disagree with that  
3 statement. I have no basis to know the validity  
4 of that.

5 Q. Okay. So going back, you mentioned that  
6 you would agree with the allegation that the way  
7 the city wrote their RFPs includes a bias that  
8 discourages minority firms from qualifying. Why  
9 do you think that's the case?

10 A. Well, not -- working off the appearance  
11 because, obviously, I'm not directly engaged in  
12 receiving, reviewing, or the factors for RFPs, but  
13 when you look at the fact that it does -- you have  
14 to make an inference -- an inference that there is  
15 something about the process that is discouraging  
16 people, which is why I didn't want to use preclude  
17 because preclude means if you participate and do  
18 all this stuff you might be getting a successful  
19 outcome.

20 But clearly something is indicated in the  
21 larger statistics that there is something about  
22 the process because the same results always seem

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1 to turn up that's discouraging people. And that's  
2 why I came to that conclusion. It's an inference  
3 versus an empirically validated conclusion.

4 Q. All right. You can set that one to the  
5 side.

6 Prior to his resignation on August 23rd,  
7 2019, did you think City Manager Dave Hansen was  
8 performing satisfactorily?

9 A. I'm asserting legislative privilege.

10 MR. BOYNTON: Well, here is the thing we  
11 have here.

12 A. Educate me.

13 MR. BOYNTON: You can answer your personal  
14 opinions. It's the conversations between you and  
15 other legislative actors; i.e., Council members,  
16 that is the privilege. So you are fair to say  
17 your opinions.

18 A. No.

19 Q. Okay. Can we -- just to get it clear --

20 MR. BOYNTON: Sure.

21 Q. Prior to his resignation on August 23rd,  
22 2019, did you think City Manager Dave Hansen was

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1 performing satisfactorily?

2 A. No.

3 Q. Why?

4 MR. BOYNTON: You can answer the question  
5 for your own personal opinions.

6 A. My own personal opinion.

7 Two examples. And they were documented in  
8 the paper. I sent a privileged communication  
9 regarding a development that was taking place in  
10 the city, the pier project specifically, that  
11 involved Bruce Thompson. Counsel had yet to hold  
12 an executive session on this particular pier  
13 proposal. I had sent a privileged, and  
14 FOIA-exempt communication I might add, to the City  
15 Manager on my thoughts about that particular  
16 project. And he took it upon himself to forward  
17 that communication, a privileged communication, to  
18 Bruce Thompson.

19 Needless to say, that's an extreme  
20 violation of trust. And I don't care what your  
21 performance is in other jobs, if you can't trust  
22 someone then they need to be fired. So that's one

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1 event. That was in December. And I forget the  
2 year on that. '17. It wouldn't have been '18.  
3 Probably was '17 when it happened. Could have  
4 been '18. That whole -- it was well-reported in  
5 the paper.

6 Q. We'll get into that.

7 What is the second one?

8 A. The second one is the City Manager was on  
9 North Great Neck Road.

10 Q. Slow down just a little bit.

11 A. The City Manager was on North Great Neck  
12 Road. There was an off-duty police officer in  
13 uniform performing a traffic control function  
14 under, I'll call it, a personal contract for a --  
15 I don't know if it's landscape, but some kind of  
16 construction activity that required him to shut  
17 off a lane of highway on North Great Neck Road.

18 The City Manager approached the situation.  
19 This is my personal opinion again. He found that  
20 whatever the activity that -- the traffic  
21 direction that the police officer was providing  
22 was not consistent with what he thought should be

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1     happening. So he got out of his vehicle and  
2     instructed the police officer to change his  
3     behavior and how he was performing his function at  
4     that location.

5             The exact nature of all the  
6     instructions -- but I guess there was some  
7     pushback from the officer for which the then City  
8     Manager Hansen said, Hey, don't you know who I am?  
9     That always gets people's attention. But clearly  
10    under the city's Charter and authority he is  
11    superior to the Police Chief, and he is in a  
12    position of power to give directions to police  
13    officers whether they're on duty or not when in  
14    uniform. Anyway, that was less than a pleasant  
15    experience. Put it that way.

16            The police officer in question, I don't  
17    know if he filed a formal grievance with the City  
18    Council, because that's who he works with, but,  
19    nonetheless, he brought that to Council's  
20    attention about how he thought he had been, my  
21    words, disrespected or dealt with inappropriately  
22    and not in a professional manner. So that got

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1 quite a bit of attention in the paper.

2 Well, in the course of all of this a lot  
3 of private memos were exchanged, as you can  
4 imagine. And one of these got out into the public  
5 domain. And when the Manager had a private  
6 meeting with this officer, he accused me of  
7 providing that information and accused me of doing  
8 it for political purposes.

9 As it turned out, that document was  
10 actually released by his own PAO officer through  
11 the television station and I had no involvement  
12 with it. At first, he denied that he threw me  
13 under the bus. But the police officer,  
14 fortunately, had recorded the conversation, so, in  
15 fact, it was documented what he said. And he had  
16 lied about what he said. So that is infraction  
17 number two.

18 And so those are my two bases for saying  
19 under no condition was his performance acceptable  
20 to me because, one, he has lied, and, secondly, he  
21 isn't trustworthy. Everything else is immaterial.  
22 So on that basis his performance was

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1       unsatisfactory.

2           Q. What was the name of the police officer?

3           A. I can't recall that, but it's a matter of  
4 public record.

5           Q. But it's a matter of public record --

6           A. It was in the newspaper.

7           Q. And do you remember what year that was?

8           A. Might have been '17.

9           Q. Has Mr. Hansen ever made racially  
10 insensitive comments during his time as City  
11 Manager?

12           MR. BOYNTON: Are you asking him for his  
13 observation?

14           Q. In your opinion.

15           A. Well, that's not something that's an  
16 opinion either. Factually -- have I --

17           Q. Have you --

18           A. -- directly heard him? Is that what  
19 you're asking? I'm not even sure I know what --

20           MR. BOYNTON: That's why I was asking.

21           Q. Let's start with that one. Have you ever  
22 directly heard Mr. Hansen make racially

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1 insensitive comments?

2 A. No.

3 Q. Are you aware of any racially insensitive  
4 comments that Mr. Hansen has made?

5 A. Statements that can be inferred to be so,  
6 yes. Yes.

7 Q. What are those statements?

8 A. One was with regards to the recent event  
9 at Floatopia. That's the best way to express it,  
10 I think. Some people could take that and did take  
11 that expression, you know, paint your face  
12 comment -- that's one. I mean, that certainly was  
13 taken by many people as being an insensitive  
14 choice of words. And --

15 Q. Why do you think that was taken as an  
16 insensitive choice of words?

17 A. Well --

18 MR. BOYNTON: I'll object to the extent  
19 it's calling for any kind of speculation.

20 A. I don't know why people -- I can  
21 imagine -- speaking for myself --

22 Q. That's all I'm asking. That's all I'm



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1 asking.

2 A. Just want to make sure.

3 In today's environment, and certainly  
4 after Governor Northam's whole thing, you can  
5 imagine that adds to the context of that  
6 statement. You know, when people think you're  
7 referring to what he claims was not his intent,  
8 that, hey, if you are one race but you had -- and  
9 your face was white, that you wouldn't be being  
10 asked. And that's how people kind of read that he  
11 was making that inference from his statement.  
12 Poor choice of words. Having reported it in the  
13 press, I could see how some people could be  
14 offended. And I could see other people would say,  
15 eh, what's the big deal? But clearly when you're  
16 a public official, you have to watch all your  
17 words.

18 Q. Were you about to talk about another one?

19 A. It wasn't him specifically, but it was --  
20 because it was Ron Williams. And it's how the  
21 Manager responded to it, I think, is probably more  
22 indicative than if you're talking about -- that

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1 was the five percenter comment. That was not by  
2 him, but he certainly didn't come out and  
3 aggressively disown that and take appropriate  
4 action. So people think you're condoning that.  
5 That's a different issue.

6 But that's kind of -- that was all based  
7 on the parade. I was at that parade. I was  
8 really surprised by that. But those are the two.  
9 But I've never directly observed him making any  
10 comments.

11 Q. So besides the two examples you gave me of  
12 Mr. Hansen sharing the privileged communication  
13 that you sent to him about the pier project and  
14 the incident involving the police officer on North  
15 Great Neck Road, in his over three years as City  
16 Manager was there anything Mr. Hansen did that you  
17 thought was grounds for termination?

18 A. Recommended consistently higher tax rates  
19 and fee increases.

20 Q. In the past you had called -- openly  
21 called for Mr. Hansen to be fired, correct?

22 A. Correct.

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1 MS. HARLESS: Let's mark this as Exhibit  
2 7.

3 (Exhibit 7 was marked and  
4 attached to the transcript.)

5 Q. Mr. Moss, you've just been handed what was  
6 marked Exhibit 7 by the court reporter. Have you  
7 seen this document before? I'll give you a  
8 second. I'm specifically going to be asking you  
9 to look at page 0776, and that's it, of this  
10 document.

11 MR. BOYNTON: Okay.

12 Q. Just for the record, if you look at the  
13 bottom right corner, there is the DEF and the  
14 numbers 0776, correct?

15 A. Correct. Yes.

16 Q. I'll represent to you this was a document  
17 produced by your Council in response to  
18 plaintiffs' document production requests in this  
19 case.

20 If you look at the top of this page, there  
21 is an article titled -- that says Two Virginia  
22 Beach Council members call for City Manager to be

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1 fired. Do you see that?

2 A. I do. Yes.

3 Q. And it's dated June 11th, 2018?

4 A. Yes.

5 Q. Were you one of the two City Council  
6 members that called for City Manager Dave Hansen  
7 to be fired?

8 A. Yes.

9 Q. Why did you call for Mr. Hansen's  
10 termination at this time?

11 A. This is repeating what I mentioned  
12 earlier. Because he did a breach of privileged  
13 communication and provided an email that I sent to  
14 him directly to the individual in the private  
15 sector over which an executive session was being  
16 held about the project, that person being Bruce  
17 Thompson.

18 Q. Why was the communication privileged?

19 A. Because it was directly dealing with a  
20 negotiation deal that we were having about a pier  
21 development project. So we had not yet set the  
22 terms. And so now he's sharing my thoughts and

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1 views about an issue that Council had not yet  
2 decided, which was going to be in the executive  
3 session that following Tuesday, and now he's  
4 giving that information and insight to the person  
5 about which the executive session was about their  
6 deal proposal.

7 Q. And you thought that was inappropriate,  
8 correct?

9 A. Yes.

10 Q. Did Mr. Hansen have a close relationship  
11 with Bruce Thompson?

12 A. It would appear so.

13 Q. As far as you're aware, did Mr. Hansen  
14 ever give a heads up like this to any other  
15 developer?

16 A. I have no proof of it, but I suspect it.

17 Q. You suspect that he gave a heads up to  
18 other developers?

19 A. It's just a suspicion.

20 Q. Who?

21 A. I have no idea, but -- yeah. That's just  
22 a personal opinion.

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1 Q. Would you say you have a good relationship  
2 with Mr. Thompson?

3 A. No, I do not. I have no relationship with  
4 Mr. Thompson.

5 Q. Is that because -- well, why is that?

6 A. Because all he wants to do is to make  
7 private expense with public taxpayers' money.

8 Q. As far as you're aware, had Mr. Hansen  
9 ever given a heads up, like the heads up he gave  
10 to Bruce Thompson, to Bruce Smith?

11 A. I have no knowledge of that.

12 Q. Okay. So we're looking at the first  
13 paragraph here. And further down in this  
14 paragraph, close to the bottom, there is a quote  
15 from you, and you're referring to Mr. Hansen. And  
16 you said, "I think the public has to ask itself  
17 given the track record do we have a managerial  
18 leadership that we can trust?" You then  
19 continued, "My answer is we do not."

20 What is the track record you're referring  
21 to regarding Mr. Hansen?

22 A. We dealt with that police issue which

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1 preceded this. It would just go with what he --  
2 his support for things like light rail, when the  
3 public clearly, even after we -- the public voted  
4 it down, he was still an advocate for it, in  
5 effect. So there is just a number of issues on  
6 which he, rather than being, in my view, a City  
7 Manager being neutral as to policy, was an  
8 advocate for the very special interest that I  
9 often talk about.

10 Q. Which special interest was he an advocate  
11 for?

12 A. Well, certainly Bruce Thompson.

13 Q. Any others?

14 A. Well, there are other people involved with  
15 the pier project, but I can't recall their names.  
16 But, generally speaking, he was -- CityView Two  
17 was another one he was an advocate for. These are  
18 all taxpayer subsidies for developers. But not  
19 all developers get those taxpayer subsidies. So  
20 he certainly had a short list, in my opinion.

21 Q. Are you -- sorry. Are you -- I didn't  
22 mean to interrupt. I thought you were done. Are

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1     you done?

2             A. I am done.

3             Q. What do you mean by certainly not all  
4     people get the taxpayer money?

5             A. I'll give you a good example. I like  
6     examples. We had Cecil Cutchins, who's Olympia  
7     Development Corporation, wanted to acquire a piece  
8     of city property on Bonney Road. He only wanted  
9     to build two office buildings on it. He was not  
10    looking for any city indirect or direct tax  
11    expenditures. The Manager and staff kept pushing  
12    on him that he had to include retail and office  
13    and all sorts of other development. And he said,  
14    hey, that won't sell in the marketplace. He said,  
15    yes, but we'll make it so it can because we'll  
16    give you tax rebates on real estate and we'll do  
17    this, this, and this.

18            The guy was so incensed he actually  
19    reached out to Council members about it, saying  
20    why are you forcing development on me that I'm  
21    willing to build here at no taxpayer anything but  
22    there is no market for this. And so in the end



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1 the Council, after this got fairly public, said,  
2 no, we're going to approve what it is. But  
3 it's -- that's just -- just an example of an  
4 approach to business that costs the taxpayers  
5 money and there is no reasonable, rational  
6 explanation for it.

7 But, anyway -- but he seems to have his  
8 own agenda.

9 Q. Dave Hansen?

10 A. Well, when he was in the job as City  
11 Manager, yes, appeared to have his own vision of  
12 what he thought the city should look like. And he  
13 was willing to use taxpayers' money to get what he  
14 wanted even when it didn't make sense. So he has  
15 a track record of having his own view of what he  
16 thinks the city should be, and I think often  
17 usurping Council's prerogatives. That's my  
18 personal view. Maybe that's why he's not the City  
19 Manager.

20 Q. How you spell Cecil Cutchins?

21 A. C-E-C-I-L, Cecil. Cutchins is  
22 C-U-T-C-H-I-N-S. And he's the CEO of Olympia

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1 Development Corporation. And all that was  
2 discussed in informal and open session, so there  
3 is a clear record of all of that.

4 Q. All right. You can set that to the side.

5 MS. HARLESS: We'll mark this as Exhibit  
6 8.

7 (Exhibit 8 was marked and  
8 attached to the transcript.)

9 Q. I'll give you a second to look at that  
10 before I ask you about it.

11 A. Okay.

12 Q. Have you seen Exhibit 8 before?

13 A. I remember when this came through from  
14 Henry. You know, I don't -- I can't -- I do  
15 remember when this came through. Like I said,  
16 this would go to all City Council, so it would  
17 have been forwarded to my personal account. I do  
18 recall -- I remember the cumulative voting.  
19 That's what stuck in my memory because that was --  
20 most people don't even know about cumulative  
21 voting.

22 Q. If you look at the bottom right corner of

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1 this document, you'll see the letters DEF and the  
2 number 09444 to 09445, correct?

3 A. Yes.

4 Q. I'd like you to look at the middle of the  
5 first page, so 094444. This is an email from  
6 Henry Ryto on October 16th, 2018 to the City  
7 Council, correct?

8 A. Correct. Yes.

9 Q. And you already mentioned you got this  
10 email as a City Council member?

11 A. Yes.

12 Q. Who is Henry Ryto?

13 A. He's a resident of Virginia Beach. That's  
14 what I know Henry as. He used to come often or  
15 earlier times down to City Council and sometimes  
16 spoke. But he comes to town halls occasionally.  
17 I think that one time he was actually employed by  
18 HRT. That's how I know Henry.

19 Q. What's HRT?

20 A. Hampton Roads Transit.

21 Q. Have you met him in person?

22 A. Yes. Not outside the Council chambers or

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1 a public event. But I have met him, yes.

2 Q. What is Mr. Ryto's race?

3 A. He's Caucasian.

4 Q. In the email Mr. Ryto proposes several  
5 alternative methods for electing members to the  
6 City Council, correct?

7 A. Correct. Yes.

8 Q. Did you support any of these proposals?

9 A. No. There is a record we previously  
10 discussed, I have supported the hybrid system for  
11 the seven districts, going to single-member  
12 districts with four at-large, including the Mayor,  
13 so no.

14 Q. Were you interested in any of these  
15 proposals?

16 A. No.

17 Q. You mentioned earlier that cumulative  
18 voting caught your eye. Was there anything  
19 particular about the cumulative voting that caught  
20 your eye?

21 A. Only that rarely do people have a  
22 knowledge of it that aren't in the ins and outs of

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1 politics of voting. Usually it's not something  
2 you hear people talk about much, so it caught my  
3 eye as, oh, an average citizen that knows about  
4 cumulative voting. That was kind of unique.  
5 That's why. Not because anything about the  
6 topics, but just that the citizen was aware of  
7 cumulative voting.

8 Q. Do you know what ranked choice voting is?

9 A. Say again.

10 Q. Do you know what ranked choice voting is?

11 A. I've heard of it. I'm not an expert on  
12 it. I wouldn't want to opine on it. But I am  
13 familiar with the basic principles of it.

14 Q. Besides this email and the communications  
15 you mentioned earlier, have you ever communicated  
16 in any way with Mr. Ryto regarding alternative  
17 election systems for the City Council in Virginia  
18 Beach?

19 A. I might have. And it would show up in my  
20 councilmail -- my archive.gov if I did.

21 Q. Do you know why Mr. Ryto is proposing  
22 alternative methods of elections to the City

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1 Council?

2 A. I have no idea, other than he has a  
3 sincere interest in, you know, expressing his  
4 views. But no, I do not.

5 Q. Did you discuss this email from Mr. Ryto  
6 with anyone else on the City Council?

7 A. No. I'm certain of that.

8 MS. HARLESS: All right. Could we just  
9 take a short break?

10 MR. BOYNTON: Uh-huh.

11 (A recess was taken.)

12 MS. HARLESS: No further questions from  
13 me.

14 MR. BOYNTON: Thank you. I have no  
15 questions for you, sir.

16 You have a right to read and sign the  
17 deposition transcript once it's transcribed to  
18 make sure it's been transcribed accurately. We've  
19 been advising our clients to read.

20 THE DEPONENT: I do.

21 MR. BOYNTON: If you'd advise --

22 THE DEPONENT: Yes. I always want to have

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1 a chance to read.

2

3 (Signature having not been waived, the  
4 deposition of JOHN D. MOSS was concluded at 12:50  
5 p.m.)

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ACKNOWLEDGMENT OF DEPONENT

I, JOHN D. MOSS, do hereby acknowledge  
that I have read and examined the foregoing  
testimony, and the same is a true, correct, and  
complete transcription of the testimony given by  
me and any corrections appear on the attached  
Errata Sheet signed by me.

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(SIGNATURE)



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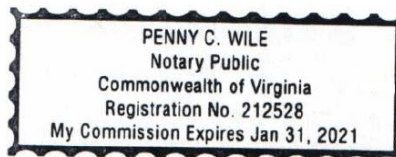
1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Penny C. Wile, RPR, RMR, CRR, the  
3 officer before whom the foregoing deposition was  
4 taken, do hereby certify that the foregoing  
5 transcript is a true and correct record of the  
6 testimony given; that said testimony was taken by  
7 me stenographically and thereafter reduced to  
8 typewriting under my direction; that reading and  
9 signing was requested; and that I am neither  
10 counsel for, related to, nor employed by any of  
11 the parties to this case and have no interest,  
12 financial or otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand and affixed my notarial seal this 23rd day of  
15 September, 2019.

16 My commission expires: January 31, 2021.

17  
18  
19 



20  
21 NOTARY PUBLIC IN AND FOR  
22 THE COMMONWEALTH OF VIRGINIA

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